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Supreme Court of the United States

OCTOBER TERM, 1961

No. 701 *HC*

MAURICE A. HUTCHESON, PETITIONER,

vs.

UNITED STATES.

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

**PETITION FOR CERTIORARI FILED FEBRUARY 7, 1961
CERTIORARI GRANTED APRIL 2, 1961**

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1960

No. 701

MAURICE A. HUTCHESON, PETITIONER,

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UNITED STATES.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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[fol. A]

**IN UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

No. 15,906

MAURICE A. HUTCHESON, Appellant,

v.

UNITED STATES OF AMERICA, Appellee.

**APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

Joint Appendix

[fol. 1]

Criminal Docket

**IN UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES

VS.

MAURICE A. HUTCHESON (29)

Case Closed

U. S. Attorney Hitz

Joseph P. Tumulty, Jr., 1317 F St., NW

M. Joseph Matan, 1317 F St., N.W.

Charles H. Tuttle, 15 Broad St., N. Y., N. Y.

Criminal No. 153-'60

**Charge: Vio. T. 2, U. S.
Code, Sec. 192**

Date filed: Bond:

10-29-59 (to also apply to 950-59)

**4-11-60 \$1000.00 U. S. Fidelity &
Guaranty Co.**

DOCKET ENTRIES

<i>Date</i>	<i>Proceedings</i>
1960 Feb 15	Presentment and Indictment Filed (18 Counts)
1960 Apr 4	Arraigned, Plea Not Guilty entered; Waiver of trial by jury, filed; Trial by Court Begun; Case is Respited until 10:00 a.m. 4-5-60; Bond in Criminal Case No. 950-59 and Criminal No. 153-60 to apply to both cases.

*Date**Proceedings*

Attorneys Charles H. Tuttle, Joseph P. Tumulty, Jr. and M. Joseph Matan present. Morris, J. (Reporter-Kaitz) Cert. filed.

1960 Apr 5 Appearance of Joseph P. Tumulty, Jr. and M. Joseph Matan and Charles H. Tuttle entered and filed; Trial by Court Resumed; Defendant On Bond; Case is Respited until 10:00 a.m. to-morrow; Attorneys Charles H. Tuttle, M. Joseph Matan and Joseph P. Tumulty, Jr. present. Morris, J. (Reporter-Kaitz) Cert. filed.

1960 Apr 6 Trial by Court Resumed; Case is Respited until 10:00 a.m. to-morrow; Defendant On Bond; Attorneys M. Joseph Matan, Joseph P. Tumulty, Jr. and Charles H. Tuttle present. Morris, J. (Reporter-Frye) Cert. filed.

[fol. 2]

1960 Apr 7 Trial by Court Resumed; Case is Respited until 10:00 a.m. Monday, 4-11-60; Defendant On Bond; Attorneys M. Joseph Matan, Joseph P. Tumulty, Jr. and Charles H. Tuttle present. Morris, J. (Reporter-Frye) cert. filed.

1960 Apr 11 Trial by Court Resumed; Finding: Guilty as charged; Case is Referred to the Probation Office of the Court; Defendant permitted to Remain On Bond pending sentence; Attorneys M. Joseph Matan, Joseph P. Tumulty, Jr., Charles H. Tuttle present. Morris, J. (Reporter-Rawls) Cert. filed.

1960 Apr 11 Recognizance in the sum of \$1,000.00 taken with United States Fidelity and Guaranty Company, filed.

1960 May 13 Sentenced to Imprisonment for a period of Six (6) Months and to pay a Fine of \$500.00. Payment of Fine and the service of

Date***Proceedings***

- the term of imprisonment Stayed pending the outcome of the Appeal. Appeal bond set in the amount of \$1,000.00 and Defendant permitted to remain in custody of counsel pending the taking of the appeal bond. Attorneys Joseph P. Tumulty, Jr. and Charles H. Tuttle, and M. Joseph Matan, present. Morris, J. (Reporter-Marion C. Dennis) Cert. filed. J.I.
- 1960 May 13 Notice of Appeal, filed. Clerk's fee of \$5.00 paid and credited to United States.
- 1960 May 13 Recognizance on Appeal in the sum of \$1,000.00 taken with United States Fidelity Guaranty Co., Surety, filed.
- 1960 May 18 Judgment and Commitment of 5-13-60, filed. Morris, J.
- 1960 Jun 15 Order extending time to docket & file Record on Appeal to and incl. 7-20-60, filed. Morris, J.
- Jul 18 Government Exhibits 1, 2, 3, 4, 5, 6, & 7 filed.
- Jul 20 Order Extending Time to Docket and File Record on Appeal to & including 7-29-60 filed. Morris, J.

[fol. 2a]

IN UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA
Holding a Criminal Term

Grand Jury Impaneled on December 22, 1959, and Sworn
in on January 5, 1960.

Criminal No. 153-60
Grand Jury Original
(2 U.S.C. 192)

UNITED STATES OF AMERICA

v.

MAURICE A. HUTCHESON

INDICTMENT—Filed February 15, 1960

The Grand Jury charges:

Introduction

On June 27, 1958, in the District of Columbia, the Senate Select Committee on Improper Activities in the Labor or Management Field, of the United States Senate, was conducting hearings, pursuant to Senate Resolutions 74, 88 and 221 of the 85th Congress.

Defendant, Maurice A. Hutcheson, appeared as a witness before that Committee, at the place and on the date above stated, and was asked questions which were pertinent to the question then under inquiry. Then and there the defendant unlawfully refused to answer those pertinent questions.

The allegations of this Introduction are adopted and incorporated into the Counts of this indictment which follow, each of which Counts will in addition merely set forth the question which was asked of the defendant and which he refused to answer.

Count One

Has he [Mr. Raddock] received from the union payment for acts performed in your behalf and for you as an individual?

Count Two

Have you, unrelated to this offense charged in the indictment now against you, engaged the services of Mr. Raddock, and have you paid him out of union funds for the performance of those services, to aid and assist you in avoiding or preventing an indictment from being found against you or for being criminally prosecuted for any other offense other than that mentioned in this indictment?

[fol. 3]

Count Three

Did you engage the services of Mr. Raddock and pay him for those services out of union funds, to contacts, either directly or indirectly, the county prosecuting attorney, Mr. Holovachka, given name Metro, in Lake County, Gary, Ind.?

Count Four

Have you paid Max C. Raddock out of union funds for personal services rendered to you at any time within the past 5 years?

Count Five

Have you used union funds to pay Max C. Raddock for any services rendered to you personally, wholly disassociated from any matters out of which the pending criminal charge arose?

Count Six

Was he there [in Chicago] on union business for which the union had the responsibility for payment?

Count Seven

Was Mr. Raddock paid on that trip, the expenses of his paid by union funds while he was on union business?

Count Eight

You were out in Chicago at the same time?

Count Nine

Were your expenses on that Chicago trip paid by the union?

Count Ten

Were you out in Chicago at that time on union business?

Count Eleven

Do you know Mr. James Hoffa?

Count Twelve

Did you make an arrangement with Mr. Hoffa that he was to perform tasks for you in return for your support on the question of his being ousted from the A. F. L. -CIO?

Count Thirteen

Isn't it a fact that you telephoned Mr. Hoffa from your hotel in Chicago on August 12, 1957?

[fol. 4]

Count Fourteen

And wasn't that telephone call in fact paid out of union funds, the telephone call that you made to him on August 12?

Count Fifteen

Do you also know Mr. Sawochka of the Brotherhood of Teamsters?

Count Sixteen

Isn't it a fact that you had Mr. Plymate who is a representative of the brotherhood, telephone, and your secretary telephone, Mr. Sawochka from your room on August 13, 1957?

Count Seventeen

And isn't it a fact that that telephone bill and that telephone call was paid out of union funds?

Count Eighteen

Did you have any business with local 142 of the Teamsters in Gary, Ind.?

Oliver Gasch, United States Attorney in and for the District of Columbia.

A True Bill:

Henry G. Pappa, Foreman.

IN UNITED STATES DISTRICT COURT

PLEA OF DEFENDANT—Filed April 4, 1960

On this 4th day of April, 1960, the defendant Maurice A. Hutcheson, appearing in proper person and by his attorney C. H. Tuttle & J. Tumulty, being arraigned in open Court upon the indictment, the substance of the charge being stated to him, pleads not guilty thereto.

[fol. 5] The bond in Criminal Case #950-59 to apply in Criminal Case #153-60.

By direction of James W. Morris, Presiding Judge Criminal Court #Four, Harry M. Hull, Clerk, By John J. Flannery.

Present: United States Attorney, By Wm. Hitz, Assistant United States Attorney, H. Kaitz—Official Reporter.

IN UNITED STATES DISTRICT COURT

Excerpts From Transcript of Proceedings—April 5, 1960

• • • • •

PAUL J. TIERNEY called as a witness and, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Hitz:

Q. Mr. Tierney, will you give your full name, please?

A. Paul J. Tierney.

Q. And your occupation, sir?

A. I was an assistant counsel with the Selective Committee on Improper Activities in the Labor-Management Field and am in the process of being transferred back to the Senate Permanent Subcommittee on Investigating.

Q. When did you first go with the Senate Select Committee?

A. From its inception in January 1957.

Q. And prior to that, did you have any connection with the Standing Labor Committee of the Senate?

A. No, I did not.

Q. Were you then with the Government Operations Committee of the Senate?

A. I was.

[fol. 6] Q. In June 1958, which is the indictment month, Mr. Tierney, were the members of the Senate which had been selected to comprise the Select Committee on Improper Activities in the Labor or Management Field those that are mentioned and named on the inside page of Part 31 which is Government Exhibit for identification No. 5?

A. They were.

Q. And they are stated there to be John L. McClellan, Chairman; John F. Kennedy, Frank Church, Karl E. Mundt, Barry Goldwater, and Carl T. Curtis, is that correct?

A. And Irving M. Ives, Vice Chairman.

Q. Yes, Irving M. Ives.

And Robert F. Kennedy was Chief Counsel, is that correct, sir, during that month?

A. That is correct.

Q. And before and afterward, too, isn't that correct?

A. That is correct.

Q. Did you, Mr. Tierney, conduct certain investigations for that Committee in that position you have already indicated of the activities of Maxwell C. Raddock of the United Brotherhood of Carpenters and Joiners of America and certain related matters? Merely state I did or did not.

Mr. Tuttle: I assume that that is a preliminary question.

The Court: I assume it is, too.

The Witness: I did.

Mr. Hitz: Your Honor, I am going to have Mr. Tierney read certain passages from Government's No. 5 for identification and I will, of course, offer those in evidence as we go along.

I will now indicate to the Court the passages from this document that we are going to read from and, in that fashion, Mr. Tuttle will be able to organize the position that he expects to take.

Would you care to have this copy as a means of following the witness, Your Honor?

The Court: I would like to have some memorandum made of what part is read so I will know that. I don't care whether I keep it or the Clerk keeps it or the reporter, if necessary, can read it back to me if I have to have it done.

Mr. Hitz: Yes.

[fol. 7] Mr. Tuttle and I, I believe, are in agreement on most or perhaps all of the material that will be read here now with respect to its materiality and its relevancy and then for its admissibility, at this stage of the case, so that I think it would be merely time consuming if we went over all of those at this time. I think if I refer to the page and line as we go forward that Your Honor can follow and so can the reporter.

The Court: All right.

By Mr. Hitz:

Q. A couple of preliminary questions, Mr. Tierney. Were you present on May 27, 1958, in the Committee Hearing Room in Washington, D. C., when there took place what appears—

Mr. Tuttle: What page?

Mr. Hitz: I am sorry, I want to change the date, on June 4 where there took place what appears on page 11785 of Government's Exhibit 5 for identification, being Part 31 of the hearing?

A. I was.

Q. And later on June 26, 1958, were you present at the hearings on that date in Washington?

A. I was.

Q. And on the 27th of June 1958?

A. I was.

Q. Have you had occasion to examine the Government print which is part of Part 31 to determine whether or not it is substantially accurate as you recall the events to have been?

A. I have.

Q. Is it substantially accurate?

A. It is.

Q. Would you please turn to page 11785 which is the hearing for Wednesday, June 4, 1958, and I would like you to read that entire page and a portion of the succeeding page.

Mr. Tuttle: If I may, I would like to put in, in fairness to the position that I am going to take about Mr. Hutcheson at this time, an agreement as to matter of fact which I understand that Mr. Hitz and I reached this morning, namely, that Mr. Hutcheson was not asked by the Committee to be present before the Committee or his counsel to be present before the Committee until June 26. I do that because there is now to be a reading from a statement by the Chairman of the Committee on June 4.

I understand it is the agreed fact that Mr. Hutcheson [fol. 8] was not present and he was not asked to be present until June 26.

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Mr. Hitz: We do agree to that and, since Mr. Tuttle has brought that subject up, I think we may as well complete now what will be our proof on that subject and if Mr. Tuttle will be good enough to turn to the report of the citation which is one of the accompanying documents to Government's Exhibit No. 4, I would like to suggest that Mr. Tuttle agree to this offer of stipulation which is: That a subpoena was signed and issued by Chairman McClellan of this Select Committee under date of 19 May 1958 as indicated on page 2 of this report.

Mr. Tuttle: That, I think, is true but I know Mr. Hutcheson was told, through the courtesy of the Committee, that they would not want him until June 26. Naturally, he regarded the return date of the subpoena as changed by the announcement of the Committee to June 26 and, on that occasion, he did present himself with his counsel and that was the first time he was before the Committee in any open session.

Mr. Hitz: That is correct. We will agree to that, as we did a moment ago, and that that subpoena was served upon Mr. Hutcheson on May 20, 1958, as appears in the legend immediately below the subpoena on page 2, that subpoena called for his appearance on June 2, 1958, in Washington at the offices of the Select Committee and that finally, by agreement with the Committee, Mr. Hutcheson did appear on the 26th before the Committee and was also there on the 27th of June 1958 at which time he gave testimony.

I invite Mr. Tuttle to agree to that stipulation.

Mr. Tuttle: I do.

The Court: All right. Apparently you are all in agreement on the thing so far.

Mr. Tuttle: Yes, sir.

By Mr. Hitz:

Q. Mr. Tierney, would you please read the entire page of 11785 in Part 31?

A. Yes, sir.

[fol. 9] "INVESTIGATION OF IMPROPER ACTIVITIES
IN THE LABOR OR MANAGEMENT FIELD

Wednesday, June 4, 1958

United States Senate

Select Committee on Improper Activities In The
Labor or Management Field, Washington, D. C.

"The select committee met at 11:10 a.m., pursuant to Senate Resolution 221, agreed to January 29, 1958, in room 457 of the Senate Office Building, Senator John L. McClellan (chairman of the select committee) presiding.

Present: Senator John L. McClellan, Democrat, Arkansas; Senator Sam J. Ervin, Jr., Democrat, North Carolina.

Also present: Robert F. Kennedy, chief counsel; Jerome S. Alderman, assistant chief counsel; Paul J. Tierney, assistant counsel; Robert E. Dunne, assistant counsel; John J. McGovern, assistant counsel; Charles E. Wolfe, accountant, GAO; Francis J. Ward, accountant, GAO; Karl Deibel, accountant, GAO; Ruth Young Watt, chief clerk.

(Members of the committee present at the convening of the session were: Senators McClellan and Ervin.)

The Chairman. The Committee will be in order.

The Chairman. We have just concluded some executive hearings and the Chair would like to make a brief statement, an opening statement regarding the hearings we are now beginning.

The committee will hear witnesses today on the operations of Mr. Maxwell Raddock, owner of the World Wide Press, a large New York printing plant, and publisher of the Trade Union Courier.

Witnesses will be called to testify as to financial interests and investments in the World Wide Press by labor organizations and certain labor officials and the unorthodox manner in which bonds of the company were issued and handled.

The committee will also inquire into the propriety of labor officials' having financial interests in Maxwell Raddock's company at the same time that they invested considerable

sums of their union's funds in the plant that prints the [fol. 10] Trade Union Courier and in subscriptions to that paper,

The manner in which advertisements were solicited by the Trade Union Courier has been the subject of investigation by the committee staff. The committee is particularly interested in whether solicitors employed by the Trade Union Courier represented it as the organ of the AFL-CIO as well as making other false representations.

Preliminary investigation by the staff has disclosed certain financial transactions of the United Brotherhood of Carpenters which require explanation.

One of these transactions involves very large expenditures in the publication of a book entitled, "The Portrait of an American Labor Leader, William L. Hutcheson."

Maurice Hutcheson, who is now president of the United Brotherhood of Carpenters, and Mr. Raddock will be questioned about this matter.

The Chair may say that during the existence of this committee we have had much information and a great deal of testimony regarding the misuse of union funds, regarding personal financial gain and benefit and profit and expenditure of such funds by union officials, and we are still pursuing that aspect of labor-management relations.

We have also had considerable evidence of collusion between management and union officials where they both profit at the expense of the men who work and pay the dues.

In this particular instance, there is indication that the union membership have again been imposed upon by transactions that have occurred that we will look into as the evidence unfolds before us."

Mr. Tuttle: If Your Honor please, may I clarify my position?

The Court: Yes.

Mr. Tuttle: I recognize this is a statement made at the opening by the Chairman. It states a number of lines of inquiry that are to be presented. I would not wish it understood that I am in agreement that all these lines of inquiry have any relation to the subject matter of the pending inquiry [fol. 11] dictment before Your Honor and the questions

that are therein embodied. For example, I believe I am correct in stating that there is no conceivable connection between the questions in the pending indictment and the manner in which Mr. Raddock conducted his World Wide Press or the Trade Union Courier, or what representations he made to advertisers in order to secure the advertisements or whether or not he was truthful in alleging an endorsement of that paper by the AFL-CIO.

Neither can I see any connection between the questions in the pending indictment and the book which is referred to as the "Portrait of an American Labor Leader—William L. Hutcheson" nor do I wish to accept the generalities that follow as to some of the objectives of the Committee but I understand that Your Honor will, of course, rule on those things as they become specific and tangible in the presentation of the case and I am only saying that by sitting silent, while that page is read, I don't wish to be in the position of abandoning my position and recognizing that all these subjects that are referred to have relevancy to the issue before Your Honor.

The Court: All right. I will construe that.

By Mr. Hitz:

Q. Mr. Tierney, was Mr. Hutcheson present at the commencement of the June 4 session from which you have just read?

A. He was not. I don't believe he was.

Q. Now, would you be good enough to turn to page 12079 of this same document?

Mr. Tuttle: What page, Mr. Hitz?

By Mr. Hitz:

Q. I am sorry, page 12017, Mr. Tierney.

Mr. Tierney, does there commence on that page the hearing of this Select Committee for June 26, 1958?

A. There does. It does commence on that page.

Q. Would you be good enough to read page 12017 and from there on until I ask you to stop, and I think I should say that some few questions and answers here are going to be read by Mr. Tierney at my request unless the Court

[fol. 12] rules otherwise, which are not the subject matter of an agreement between Mr. Tuttle and myself.

Mr. Hitz: Mr. Tuttle, I have reference to the questions that precede our agreed commencement on page 12018. I feel that perhaps continuity here is more important than leaving that material out and, in addition, that material at the top of page 12018 does have a bearing upon some portion of the indictment material so I say that to Mr. Tuttle so that he may, at this time, formulate his position.

Mr. Tuttle: I appreciate that, Mr. Hitz.

The questions that you are referring to, I assume, are those on page 12018 which relate to the Mid-City Investments, Inc., the Consolidated Investments, Inc., Mr. George Goldstein, Mr. Charles Gluck and several other persons before the question about knowing Metro Holovachka?

Mr. Hitz: That is correct.

Mr. Tuttle: I cannot conceive what bearing they have on the indictment here because none of these gentlemen are in any way concerned with the Indiana situation that was thereupon taken up with Mr. Raddock.

May I inquire, Your Honor, of Mr. Hitz, how he thinks that makes any connection?

Mr. Hitz: Some of it does.

The State Sibly Corporation, which is mentioned in that questioning, is an organization which had a part in the transaction that the Teamsters Union funds were instrumental in creating and which had to do with the indication that funds went from that source to Mr. Holovachka and that that may well have been the way in which Mr. Holovachka decided to terminate his Lake County Grand Jury investigation in the way in which it was terminated. In other words, the State Sibly Corporation is a company behind that transaction.

Mr. Tuttle: I have no desire, Your Honor, to take up time about a trivial matter. These questions, on their face, amount to nothing because the answer is no, but if I am permitted, should the subject be later developed to bring forward an objection, why, I am not going to interrupt Mr. Hitz at this point.

[fol. 13] The Court: All right.

By Mr. Hitz:

Q. Will you read, sir.

A. (Reading:)

**"INVESTIGATION OF IMPROPER ACTIVITIES IN THE LABOR OR
MANAGEMENT FIELD**

Thursday, June 26, 1958

United States Senate,

Select Committee on Improper Activities in the Labor
or Management Field, Washington, D. C.

"The select committee met at 10 a.m., pursuant to Senate Resolution 221, agreed to January 29, 1958, in the caucus room, Senate Office Building, Senator John L. McClellan (chairman of the select committee) presiding.

Present: Senator John L. McClellan, Democrat, Arkansas; Senator John F. Kennedy, Democrat, Massachusetts; Senator Barry Goldwater, Republican, Arizona; Senator Carl T. Curtis, Republican, Nebraska.

Also present: Robert F. Kennedy, Chief counsel; Paul J. Tierney assistant counsel; John J. McGovern, assistant counsel; Harold Ranstad, investigator; Charles E. Wolfe, accountant, GAO; Karl Deibel, accountant, GAO; John Prinos, accountant, GAO, Richard G. Sinclair, accountant, GAO; Ruth Young Watt, chief clerk.

(At the convening of the session, the following members were present: Senators McClellan and Curtis.)

The Chairman. The committee will come to order.

Call the next witness, Mr. Kennedy.

Mr. Kennedy. Mr. Raddock, please, Mr. Chairman."

Q. Then followed the testimony of Mr. Raddock?

A. It did.

Q. Had Mr. Raddock previously testified before this Select Committee?

A. He had.

Q. And is that testimony contained on page 11932 as indicated in the table of contents?

A. It is.

Q. And at several other places between that reference and the one that you are about to read?

A. That is correct.

Q. I am going to ask you just one or two questions with [fol. 14] respect to that. Were you present when Mr. Raddock gave his earlier testimony? Say "I was" or "I was not."

A. I was.

Q. Was he questioned in those appearances concerning the biography of Mr. Hutcheson, Sr., and other related matters?

A. He was.

Q. Did he give answers to those questions?

A. He did.

Q. Would you be good enough to continue reading without omission?

A. (Reading:)

"TESTIMONY OF MAXWELL C. RADDOCK, ACCOMPANIED BY HIS COUNSEL, SEYMOUR WALDMAN—Resumed.

The Chairman. All right, Mr. Kennedy, you may proceed.

Mr. Waldman. Mr. Chairman, in view of the impressive demonstration yesterday of Mr. Christie of the fact that 'Hell hath no fury like an author scorned,' may we have permission at this point in the record to supply the Committee and have inserted book reviews from publications of general circulation whose views on the literary merits of this book are quite different than Mr. Christi's?

The Chairman. They may be filed with the committee for reference, and he may refer to them in the course of his testimony if he desires.

Mr. Waldman. We don't have them with us, they are in New York, but we will send them to you.

The Chairman. You may file them with the committee for the committee's consideration and action on them. If found to be appropriate, they either may be inserted in the record or filed as an exhibit to the testimony of the witness.

Proceed.

Mr. Kennedy. Mr. Raddock, do you know anything about the 1300 Broadway Corp.?

Mr. Raddock. No, sir.

Mr. Kennedy. You never heard of that?

Mr. Raddock. No.

Mr. Kennedy. Do you know anything about Consolidated Investments, Inc.?

Mr. Raddock. No, sir.

[fol. 15] Mr. Kennedy. The Mid-City Investments, Inc.?

Mr. Raddock. No, sir.

Mr. Kennedy. The State Sibly Corp.?

Mr. Raddock. No, sir.

Mr. Kennedy. Do you know of Mr. George Holdstein?

Mr. Raddock. No, sir.

Mr. Kennedy. Do you know of a Mr. Charles Bluck?

Mr. Raddock. No, sir.

Mr. Kennedy. Have you ever had any conversations regarding either one of those two individuals?

Mr. Raddock. I don't know any of those names.

Mr. Kennedy. Do you know a Norman Leavenberg of the Mid-City Investments?

Mr. Raddock. No, sir.

Mr. Kennedy. Do you know a gentleman or heard discussion of a gentleman by the name of A. Martin Katz?

Mr. Raddock. No, sir.

Mr. Kennedy. Do you know Al Weinstein?

Mr. Raddock. No, sir.

Mr. Kennedy. Do you know Metro Holovachka, the county prosecutor at Lake County, Ind.?

(The witness conferred with his counsel.)

Mr. Raddock. On the advice of counsel I refuse to answer the question on the ground that it may tend to make me a witness against myself.

Mr. Kennedy. You know this is a government official in Lake County, Ind., and you refuse to tell us even whether you know him on the ground that it may tend to incriminate you?

He is a county official.

Mr. Raddock. The answer is still the same, Mr. Kennedy. Do you wish me to repeat the entire answer?

Mr. Kennedy. Yes, would you?

Mr. Raddock. On advice of counsel, I refuse to answer the question on the ground that it might tend to make me a witness against myself.

The Chairman. Do you know whether he is still the county prosecutor in that county, Lake County? If I understand you correctly, you have taken a position you could not state whether you know this official, this county official, you could not make a statement as to whether you know him or do not know him, without tending to incriminate you. I just asked a question as to whether you know he is still a county official. I am not sure. Do you know whether he is still a county official?

Mr. Raddock. Senator, on the advice of counsel, I refuse to answer the question on the ground that it might tend to make me a witness against myself.

The Chairman. Let me ask you this question: Do you state under oath that you honestly believe that if you gave a truthful answer to the question, that the truth might tend to incriminate you?

(The witness conferred with his counsel.)

Mr. Raddock. Yes, sir.

The Chairman. You honestly believe that?

Mr. Raddock. Yes, sir.

The Chairman. Of course, you, having the facts, would know better than I whether your acquaintance with him might tend to incriminate you. So you state it under oath.

The record will stand that way.

Proceed, Mr. Kennedy.

Mr. Kennedy. Do you know Mr. Michael Sawochka, of Gary, Ind.?

Mr. Raddock. On the advice of counsel, Mr. Kennedy, I refuse to answer the question on the ground that it may tend to make me a witness against myself.

Mr. Kennedy. Do you know Mr. Sawochka as the secretary-treasurer of Local 142 of the Teamsters, in Gary, Ind.?

Mr. Raddock. On the advice of counsel, I refuse to answer the question on the ground that it may tend to make me a witness against myself.

The Chairman. Mr. Raddock, you have answered very freely all questions up to now, and answered some of them at considerable length. I don't know what is to be implied from this immediate change of attitude. It is your privilege to take the Fifth Amendment if you honestly believe that

[fol. 17] answering the questions truthfully might tend to incriminate you.

I am hopeful that you would continue as you did yesterday to be cooperative with the committee and give it all information within your knowledge.

Proceed, Mr. Kennedy.

Mr. Kennedy. Do you know what the relationship is between Mr. Sawochka, the Teamsters official, and Mr. Holovachka, the County Prosecutor of Lake County?

Mr. Raddock. On the advice of counsel I decline to answer on the ground that to do so might tend to make me a witness against myself.

Mr. Kennedy. Was Mr. James Hoffa contacted in connection with the matters dealing with the Carpenters in Lake County, Ind.?

Mr. Waldman. May I say that it would seem to me that I would have to advise the witness on this, and I certainly don't understand what that refers to, the matters dealing with the Carpenters.

Mr. Kennedy. I will go on. The question was not clear, is that right?

Mr. Waldman. It wasn't to me, to the extent that I could properly advise the witness.

Mr. Kennedy. All right.

Certain matters dealing with the purchase and sale of land in Indiana were being presented to a grand jury in Lake County, is that correct, Mr. Raddock?

(The witness conferred with his counsel.)

Mr. Raddock. On the advice of counsel, I decline to answer on the ground that to do so might make me a witness against myself.

Mr. Kennedy. Was Mr. Hoffa's help or assistance requested in connection with the possible indictments that were to arise out of that case?

Mr. Raddock. On the advice of counsel, I decline to answer on the ground that to do so might tend to make me a witness against myself.

Mr. Kennedy. Isn't it correct that Mr. Hoffa was contacted and he, in turn, contacted Mr. Sawochka in Lake County, of the Teamsters Union in Lake County?

[fol. 18] Mr. Raddock. On the advice of counsel, Mr. Kennedy, I decline to answer on the ground that to do so might tend to make me a witness against myself.

The Chairman. Let me ask you this: Do you have any knowledge of such a contact having been made?

Mr. Raddock. Senator McClellan, on the advice of counsel I decline to answer on the ground that to do so might tend to make me a witness against myself.

The Chairman. Do you honestly believe that if you answered that question truthfully, the truth might tend to incriminate you?

Mr. Raddock. Yes, sir.

The Chairman. You honestly believe that?

Mr. Raddock. Yes, sir.

The Chairman. Proceed.

Mr. Kennedy. Mr. Chairman, could I read a short statement in background of this situation to clarify it?

The Chairman. So that there will be no doubt as to the subject matter being inquired into, and so that the witness may be so apprised, you may read some background information, not as testimony, but upon which to predicate further testimony.

Mr. Kennedy. In May and June of 1957, hearings were held before the Gore committee, concerning the purchase of land along a proposed right-of-way in Lake County, Ind., by certain individuals, including Frank Chapman, who was the general treasurer of the Carpenters International.

The Chairman. Is that a right-of-way for a highway for a public highway?

Mr. Kennedy. That is correct. And the purchase that was being looked into was the purchase that was made in June of 1956.

Involved in this situation, along with Chapman, were Maurice A. Hutcheson, general president of the Carpenters, and O. William Blaier, second general vice president. Within several months after the purchase of the land, it was sold to the State for the highway at a \$78,000 profit on a \$20,000 investment.

[fol. 19] Part of the proceeds of the profits were allegedly paid by Chapman to the Indiana Highway Commission,

and a deputy in the right-of-way office of the Indiana Highway Department.

Hutcheson, Blaier, and Chapman invoked the fifth amendment before the Gore committee on this matter. This whole situation was presented to the Lake County grand jury by Metro Holovachka, the county prosecutor, commencing July 22, 1957.

The grand jury recessed on July 23, and thereafter considered the matter for an additional day on August 19, 1957.

Hutcheson, Blaier, and Chapman did not appear before the grand jury because Holovachka did not subpoena them, or could not."

The Court: At this time, the Court will take a brief recess and try to locate lawyers in another case and then we will resume.

(Thereupon a short recess was taken.)

The Court: All right. Let's go ahead with this.

By Mr. Hitz:

Q. Do you know where you left off, Mr. Tierney?

A. I do.

Q. Will you continue?

A. (Reading:)

"Hutcheson, Blaier, and Chapman did not appear before the grand jury because Holovachka did not subpoena them, or could not. On August 20, 1957, Holovachka announced that no indictments of the Carpenters' officials as well as others involved would be forthcoming because 'A lack of jurisdiction.' Moreover, through an attorney whom Holovachka refused to identify, the Carpenters' officials made restitution to the State of the \$78,000 profit made on the deal.

Subsequently, Mr. Chairman, these three individuals as well as certain of the State officials, were indicted in an adjoining county, Marion County, in the State of Indiana on this deal.

We are inquiring into the situation in connection with the presentation before the grand jury in Lake County, Ind.; the intervention by certain union officials into that matter, and the part that was played by Mr. Hutcheson himself, Mr. Sawochka, the secretary-treasurer of local 142 of the Teamsters, and Mr. James Hoffa, the international president of the Teamsters.

[fol. 20] The Chairman. Is there some information that either union funds were used in the course of these transactions or that the influence of official positions of high union officials was used in connection with this alleged illegal operation?

Mr. Kennedy. We have information along both lines, Mr. Chairman, not only the influence but also in connection with the expenditure of union funds.

The Chairman. In that respect, then, it would be similar to the instance down in Tennessee, where we found union funds, some \$20,000, being used in a manner unaccounted for; is that correct?

Mr. Kennedy. That is correct.

The Chairman. I believe subsequently it has developed that one of the union officials down there who took the privilege of the fifth amendment before this committee has subsequently acknowledged in an official tribunal, before the senate sitting as an impeachment court in the State of Tennessee, that the \$20,000 was used for an illegal purpose; is that correct?

Mr. Kennedy. That is correct; for the purpose of fixing his case.

The Chairman. For fixing a case where there were some 13 union officials involved and indicted.

Mr. Kennedy. That is correct.

The Chairman. That is the interest of this committee in a transaction of this kind or alleged transaction of this kind, to ascertain again whether the funds or dues money of union members is being misappropriated, improperly spent, or whether officials in unions are using their position to intimidate, coerce, or in any way illegally promote transactions where the public interest is involved.

Mr. Raddock, you have heard a background statement. That is not evidence, but it is information, however, which

the committee has, regarding this matter out there. The committee is undertaking to inquire into this in pursuit of the mandate given to it by the resolution creating the committee.

It is our duty to inquire into it. If you have information, [fol. 21] and apparently you have because you say if you give it, it might tend to incriminate you, may I say to you that you have an opportunity here now, if you have information that will throw any light on this, you have an opportunity now to render a service to your country, to union members, to honest, decent unionism as such, and also to law and order in this country, if you will cooperate and give the information and the facts you have which are within your knowledge.

I will ask you if you are willing to do that.

(The witness conferred with his counsel.)

Mr. Raddock. Mr. Chairman, I would like to make it clear for the record, for the press and for the American people that I, too, love my country above everything else; that I am a devotee of honest, clean, genuine, and bona fide trade unionism, and concerned with the American people and the rank and file of labor.

But on the advice of counsel, I decline to answer on the ground that to do so might tend to make me a witness against myself.

The Chairman. Well, I believe you said you loved your country above everything else. I was hoping that your cooperation would clearly confirm that statement. You have the right, of course, if you honestly believe that if you told the truth the truth might tend to incriminate you, you have the right under the laws of this country, under its constitution, to withhold the facts that you have.

I was hoping it wasn't that serious. I am really disappointed that it is. I was hopeful that you could cooperate with us and help us get leads here and evidence that would help to expose those who may have engaged in criminal acts, those who may have abused their position and their authority and as union officials, and who may have brought discredit upon one of the large international unions of this

country, and that you might be helpful in securing the measure of law enforcement that helps to preserve this country that you profess to love.

(The witness conferred with his counsel.)

Mr. Raddock. Mr. Chairman, on advice of counsel I decline to answer on the ground that to do so might tend to make me a witness against myself.

[fol. 22] The Chairman. Mr. Kennedy, do you have other questions along this line?

Mr. Kennedy. Yes, Mr. Chairman. We have some information, Mr. Chairman, which I would like to ask Mr. Raddock about in connection with this matter, the part that he personally played in the situation.

The Chairman. All right. If we have information of this witness' connection with anything within the jurisdiction of this committee, about which we are concerned here, in inquiring into, you may ask the witness the questions. He has his right, which he may exercise, but I think the record should be made. At this time, the Chair would like to announce that this prosecuting attorney or county attorney, Mr. Metro Holovachka, has been notified by the committee by telegram dated June 17, 1958, which telegram was delivered to Mr. Holovachka on the 21st of June at 2:30 p.m. He was invited, among other things, as the telegram says, after advising him—and this may be printed in the record, this telegram, and the certification of the delivery by the Western Union at this point— I will read this for the information of those interested:

This is to advise you that the public hearings will be held at 10 a.m. on or about June 24, 1958, at which time it is expected that information reflecting upon you will be developed. You will be afforded an opportunity to testify if you so desire. If you do desire to testify, it is requested that you advise me by collect wire at room 101, Senate Office Building, in order that we may inform you of the exact time and date of the hearing.

That was signed by chief counsel of the committee.

(The document referred to follows:)

Select Labor Committee

Official Business

June 17, 1958

(Please confirm delivery)

Mr. Metro Holowachka
7321 Oak Avenue, Gary, Ind.:

This is to advise you that public hearings will be held at 10 a.m. on or about June 24, 1958, at which time it is expected that information reflecting upon you will be developed. You will be afforded an opportunity to testify if you so desire. If you do desire to testify, it is requested that you advise me by collect wire at room 101 Senate Office Building in order that we may inform you of the exact time and date of the hearing.

Robert F. Kennedy,

Chief Counsel, Senate Select Committee on Improper Activities in the Labor or Management Field.

(Western Union Telegram)

Washington, D. C., June 17, 1958.

Robert F. Kennedy,

Chief Counsel, Senate Office Building, Washington, D.C.:

Your telegram June 17 to Metro Holowachka, 7321 Oak Avenue, Gary, Ind., is undelivered. Addressee is out of the city until Saturday. Your message will be delivered upon his return.

Western Union

(Western Union telegram)

Gary, Ind., June 21, 1958.

Robert F. Kennedy,

Chief Counsel, Senate Select Committee on Improper Activities in the Labor or Management Field, Washington, D.C.:

Your telegram 17th Metro Holowachka, 7321 Oak Avenue, deled 230 pme est (personally).

Western Union

The Chairman. Have you received a wire or message from Mr. Holovachka since the telegram was delivered?

Mr. Kennedy. No, Mr. Chairman, he has not contacted us since that telegram was delivered. At an earlier time we had informed him verbally that we had expected to develop matters along this line, and he indicated he was not going to come before the Committee.

The Chairman. The only reason I make this a part of the record at this time, I may say, is because in the Tennessee investigation, in which Judge Schoolfield's name [fol. 24] came into the hearing and derogatory testimony was developed with respect to him, or testimony brought his name into the hearing, he was advised by wire, and also by telephone conversation, that there would be information that might reflect upon him developed by the committee, and he was invited to be present.

Thereafter, some suggestion was made that he should have been subpoenaed. In a matter of this kind, it is the Chair's feeling, at least, unless we have reason to believe they would give testimony and not just invoke the fifth amendment, it is not necessary to put the Government to that expense.

If they do not care to come and testify after being invited, then we can determine later whether a subpoena is warranted. But we do not want to be unfair to anyone, and where we have advance knowledge that testimony will be given that will reflect upon an official of the Government or of a State, or subdivision thereof, we feel it proper to advise them and give them the opportunity to be heard if they so desire.

All right, Mr. Kennedy, proceed.

Mr. Kennedy. Mr. Chairman, we have information that Mr. Raddock registered at the Drake Hotel on August 11, 1957, with Mr. Hutcheson.

Is that correct, Mr. Raddock?

The Drake Hotel in Chicago, Ill.

Mr. Raddock. On the advice of counsel, I decline to answer on the ground that to do so might tend to make me a witness against myself.

Mr. Kennedy. And that his transportation to that hotel and his stay at the hotel was paid for out of Carpenter funds.

Is that correct, Mr. Raddock?

(The witness conferred with his counsel.)

Mr. Waldman. There is some doubt. When you say his transportation and hotel, do you mean, by his, Mr. Raddock's?

Mr. Kennedy. Yes, Mr. Raddock's.

Mr. Raddock. On the advice of counsel, I decline to answer on the ground that to do so might tend to make me a witness against myself.

The Chairman. May I ask you, Mr. Raddock, if, on other [fol. 25] occasions, you have performed services for the Carpenters' Union?

(The witness conferred with his counsel.)

Mr. Raddock. Yes, sir, Senator McClellan.

The Chairman. You have performed services for the International Brotherhood of Carpenters on other occasions, for which you have been paid and for which you have received your expenses, is that correct?

(The witness conferred with his counsel.)

Mr. Raddock. In the year 1956, I was paid for services in connection with the all-year-long 75th anniversary celebration and regional conferences held throughout the United States and Canada.

The Chairman. Were your travel expenses paid by the Carpenters' Union in connection with those services?

(The witness conferred with his counsel.)

Mr. Raddock. Your question was travel expenses and—

The Chairman. Travel expenses and hotel bills incident to the performing of the services for which you were employed. Were your expenses, travel expenses, hotel bills,

and incidental expenses connected with the services rendered, paid by the Carpenters' Union?

Mr. Raddock. During the year 1956, the Carpenters' Union paid a portion of hotel bills, I believe, and some travel expenses for myself and some other members of my staffs.

The Chairman. In connection with the work—

Mr. Raddock. With the 1956 yearlong celebration and regional conferences.

The Chairman. Well, that was in connection, I say, with work you were performing for the Carpenters' Union, is that correct?

Mr. Raddock. Precisely as I outlined them.

The Chairman. Well, I think I understood you.

Mr. Raddock. Yes, sir, Senator McClellan.

The Chairman. So your expenses were paid.

And it would be proper, I think, if you were performing the services. There is nothing improper about it. The only question is if you have been performing services for them and have been paid for them. We asked a question about—[fol. 26] on this particular occasion of August 11, 1957, if you registered at the Drake Hotel in Chicago, along with Mr. Hutcheson of the Carpenters' Union, and if your expenses, your travel expenses and hotel bills were paid for that trip and for whatever services you performed at that time.

Are you prepared to answer that?

(The witness conferred with his counsel.)

Mr. Raddock. On the advice of counsel, I decline to answer on the ground that to do so might tend to make me a witness against myself.

The Chairman. The other services that you performed, that you have testified to, for which you were paid, there was nothing in connection with that, I believe, then, that causes you to feel that if you told the truth about it you might be a witness against yourself, is that correct?

(The witness conferred with his counsel.)

Mr. Raddock. If I understood you correctly, Senator, anything that I answered previously regarding my services

to the United Brotherhood of Carpenters and travel and other expenses therefor, are correct.

The Chairman. I hand you here, then, a photostatic copy of your registration at the Drake Hotel on the 8th and 15th, I believe, in 1957; is that correct—yes—together with the bill rendered by the hotel for your stay there, and ask you to examine it and state if you identify your registration card and also the bill rendered for your expenses, your hotel bill and so forth, while there.

I ask you to examine them and state if you identify them.

(The documents were handed to the witness.)

(The witness conferred with his counsel.)

Mr. Raddock. Mr. Chairman, on the advice of counsel I decline to answer on the ground that to do so might tend to make me a witness against myself.

The Chairman. The hotel bill and the registration certificate may be made Exhibits Nos. 45 A and B.

(The documents referred to were marked 'Exhibits Nos. 45 A and B' for reference and may be found in the files of the Select Committee.)

[fol. 27] The Chairman. I believe the hotel bill shows that it was signed for, or approved by Mr. M. A. Hutcheson.

Is that correct? It shows that you registered as representing the firm of United Brotherhood of Carpenters and Joiners of America.

Is that correct, Mr. Raddock?

Mr. Raddock. On the advice of counsel, I decline to answer on the ground that to do so might tend to make me a witness against myself.

The Chairman. Is this your handwriting on the registration certificate, Mr. Raddock?

Mr. Raddock: On the advice of counsel, I decline to answer on the ground that to do so might tend to make me a witness against myself.

The Chairman. I believe the hotel bill totals some \$147.10. Was that hotel bill paid by you or was it paid by the Brotherhood, the International Carpenters and Joiners.

Mr. Raddock. On the advice of counsel, Mr. Chairman, I respectfully decline to answer on the ground that to do so might tend to make me a witness against myself.

The Chairman. Were you in the employ of the United Brotherhood of Carpenters and Joiners of America at the time you took this trip to Chicago, and at the time you incurred this hotel bill?

Mr. Raddock. On the advice of counsel I decline to answer on the ground that to do so might tend to make me a witness against myself.

The Chairman. If you were in their employ, as this indicates, or that your expenses were being paid, will you tell us what kind of service you were employed to render at that time?

Mr. Raddock. On the advice of counsel, I decline to answer on the ground that to do so might make me a witness against myself.

The Chairman. Mr. Raddock, you have answered other questions regarding the work you did for the same international union, and stated that you got paid for it, and got your expenses for it.

I assume, then, of course, where you answered with respect to that, there was nothing connected with your employment that might tend to incriminate you, or cause you to be a witness against yourself by answering truthfully about it.

[fol. 28] Now we reach this point where you are apparently on a mission for this international union, and your expenses are being paid. Now you state, if I understand you correctly, that if you answered truthfully regarding this trip, this mission, the services rendered, and accepting expenses for it, that if you answered truthfully, the truth might tend to incriminate you; is that correct?

(The witness conferred with his counsel.)

Mr. Raddock. Yes, sir, Senator.

The Chairman. Well, that is a very sad situation. Here is a great international union. The officers have tremendous responsibility. They are in a position of great and sacred trust, I would say, to literally thousands upon thousands of working people in this country who are members of that

union, who support it. Here we have now expenditures being made over the authority or authorization of the president of that great international union, expenses being paid for services, I assume, rendered, where the one who performs the service and who receives the expenses states that if he told the truth about it, that is, as to the kind of service he was to perform, or what he was employed to do, or having accepted and received the expenses incurred in connection with that service, if he told the truth about it, it might tend to incriminate him.

That cannot help—without being explained, it cannot help but be a reflection upon the management of that union.

It is those things that has given the country as well as this committee and the Congress grave concern about how some affairs of unions are today being conducted.

I should hope that you would reconsider and be able to help the committee and give us the truth about it.

If Mr. Hutcheson, and the services you were engaged in, that you were employed to perform, and the expense that he authorized here and paid out of union funds were for legitimate reasons, I would be hopeful that you would give us an explanation of it.

Can you do that?

(The witness conferred with his counsel.)

[fol. 29], Mr. Raddock. Senator, on the advice of counsel, I must respectfully decline to answer on the ground that to do so might tend to make me a witness against myself.

The Chairman. I am compelled, and I think everyone who listens or who may read this transcript is compelled, to the conclusion that you are being truthful at least about taking the fifth amendment, and that if you did tell the truth, it might tend to incriminate you, and also those of the union who are responsible for and who authorize the services you performed.

I will have to let the record stand that way, unless you wish to correct it by sworn testimony.

Mr. Waldman. Well, I assume the record needn't show that the courts have held that the plea of the privilege did not indicate an admission on the part of the witness—

The Chairman. The attorney can take judicial notice of that as I do. I said he had a right to take it under the Constitution, and the committee needs no lecture at this late hour in its work with respect to what the fifth amendment is and the privilege of taking it.

Let's proceed.

Mr. Kennedy. You were in Chicago on August 11, 1957; it was there, was it not, that the contract was made with Mr. Hoffa?

Mr. Raddock: On the advice of counsel, I decline to answer on the ground that to do so might tend to make me a witness against myself.

Mr. Kennedy. And you were there on August 11 and August 12 at this hotel, were you not, the Drake Hotel?

Mr. Raddock. On the advice of counsel I again respectfully decline to answer on the ground that to do so might tend to make me a witness against myself.

Mr. Kennedy. The contact was made with Mr. Hoffa during that period of time, and he agreed at that time that he would contact Mr. Sawochka, the local teamster official in Gary, Ind., is that correct?

(The witness conferred with his counsel.)

Mr. Raddock. On the advice of counsel, Mr. Kennedy, I [fol. 30] decline to answer on the ground that to do so might tend to make me a witness against myself.

Mr. Kennedy. Didn't you then, on August 13, contact Mr. Sawochka yourself?

(The witness conferred with his counsel.)

Mr. Waldman. Mr. Chairman, Mr. Raddock has a very sore throat which he got in part from his full day's testimony yesterday. May he be permitted to just say the same answer in the light of that?

It is very difficult for him to testify.

The Chairman. Are you suffering from a severe throat ailment?

Mr. Raddock. Yes, sir, Senator. I don't know how severe it is, but it does hurt.

The Chairman. It hurts? It is painful to you when you

invoke the fifth amendment by repeating the 'on the advice of counsel' statement?

Mr. Raddock. As one American to the other, Senator, I have always answered you most respectfully. But I do have a sore throat which is an ailment that can overtake humans when they talk freely as I did all day yesterday, from 10 to 4, only to have a stellar performance follow me which I still haven't had a chance to refute.

The Chairman. Well, we are giving you every opportunity now, and the Chair was simply trying to ascertain from you if it would add to your comfort and help you in giving your testimony if the Chair simply permitted you to state 'The same answer,' with the understanding that 'the same answer' would be 'on the advice of counsel' as you have quoted a number of times. I am trying to make this record so there would be no doubt about it. I am trying to be considerate.

Mr. Raddock. As I said yesterday, you are most considerate, Senator, you are the perfect gentleman from Arkansas. But my throat does hurt me slightly, and I would appreciate it if I could make my answers on this subject briefer.

Mr. Kennedy. I wish you had said that yesterday.

Mr. Waldman. His throat didn't hurt yesterday.

The Chairman. I don't want to ever be unfair to anyone, whether it is a physical ailment or suffering. I don't [fol. 31] want to be unfair or unduly exacting. It is quite proper, however, for the taking of the privilege to be stated clearly so there can be no misunderstanding about it.

The understanding, and with your acquiescence in it, that you do state each time when you say 'I give the same answer,' you refer to the statement you have been reading, 'on the advice of counsel' which says that you decline on the ground that to do so might be giving evidence against yourself.

(The witness conferred with his counsel.)

Mr. Raddock. That is agreeable, Senator.

The Chairman. All right.

Since the committee is being very considerate of you,

won't you be a little more considerate of us and more cooperative?

This is not pleasant, what we are having to do. I think one favor deserves another. Can you now be cooperative with us?

Well, all right, proceed.

Mr. Kennedy. We had you contacting Mr. Sawochka on August 13.

Can you tell us what you discussed with him at that time?

(The witness conferred with his counsel.)

Mr. Raddock. The same answer, Mr. Kennedy.

Mr. Kennedy. And then several times again on August 14 you contacted him?

Mr. Raddock. The same answer, Mr. Kennedy.

Mr. Kennedy. Then you went down to Gary, Ind., and consulted with him, did you not?

Mr. Raddock. The same answer, Mr. Kennedy.

Mr. Kennedy. Would you tell the committee how it was going to be arranged between you and Mr. Sawochka to make the approach to the prosecuting attorney?

Mr. Raddock. The same answer, Mr. Kennedy.

Mr. Kennedy. Was Mr. Joseph P. Sullivan, who was the attorney for local 142, brought in on this matter?

Mr. Raddock. The same answer, Mr. Kennedy.

Mr. Kennedy. Do you know Mr. Joseph P. Sullivan?

[fol. 32] Mr. Raddock. The same answer, Mr. Kennedy.

Mr. Kennedy. And at the same time as being the attorney for local 142, was he also an assistant county prosecutor?

Mr. Raddock. The same answer, Mr. Kennedy.

Mr. Kennedy. So were discussions held with Mr. Sullivan also?

Mr. Raddock. The same answer, Mr. Kennedy.

Mr. Kennedy. Were most of those conversations held by Mr. Sawochka with Mr. Sullivan?

Mr. Raddock. The same answer, Mr. Kennedy.

Mr. Kennedy. There was discussion at that time, was there not, about having no indictments against Mr. Hutcheson, Mr. Chapman, and Mr. Blaier?

Mr. Raddock. The same answer, Mr. Kennedy.

Mr. Kennedy. Was it discussed at that time the reim-

bursement to Mr. Holovachka for not indicting Mr. Chapman, Mr. Blaier, and Mr. Hutcheson?

Mr. Raddock. The same answer, Mr. Kennedy.

Mr. Kennedy. Was there going to be another land operation so that Mr. Holovachka could be reimbursed?

(The witness conferred with his counsel.)

Mr. Raddock. The same answer, Mr. Kennedy.

Mr. Kennedy. Did you return, then, to your home in, your residence, Mamaroneck, around August 17, 1957?

Mr. Raddock. The same answer, Mr. Kennedy.

Mr. Kennedy. And your air transportation back to New York from Chicago was paid by the Carpenters, was it not?

Mr. Raddock. The same answer, Mr. Kennedy.

Mr. Kennedy. And when you returned home to Mamaroneck on August 17, didn't you call Mr. Sawochka at his residence in Gary, Ind., at 9:36 p.m. and speak for 17 minutes?

Mr. Raddock. The same answer, Mr. Kennedy.

Mr. Kennedy. And shortly after you talked to Mr. Sawochka, didn't you call Mr. Hutcheson at his residence in Indianapolis at 10:34 and speak to him for 4 minutes?

[fol. 33] Mr. Raddock. The same answer, Mr. Kennedy.

Mr. Kennedy. That is the information we have.

The Chairman. Have you checked the telephone records and that is what they reflect?

Mr. Kennedy. That is correct.

The Chairman. You appreciate, Mr. Raddock, that this information comes from the records of the telephone company. Would you want to refute it?

Mr. Raddock. The same answer.

The Chairman. Do you want to deny these records are correct?

Mr. Raddock. The same answer, Senator McClellan.

The Chairman. In this instance, I gather the impression from this background information and from your attitude about it, there was a conspiracy between those of you who were pursuing this project to obstruct justice, to prevent indictments being found against Mr. Hutcheson, Mr. Chapman, and Mr. Blaier. Is that a correct assumption?

(The witness conferred with his counsel.)

Mr. Raddock. The same answer, Senator McClellan.

Mr. Kennedy. Also at this period of time or perhaps possibly earlier, Mr. Charles Johnson was brought into the matter; is that right?

Mr. Raddock. The same answer, Mr. Kennedy.

Mr. Kennedy. Do you know Charlie Johnson, vice president of the Carpenters?

Mr. Raddock. I know Charles Johnson, Mr. Kennedy.

Mr. Kennedy. Of the Carpenters' Union?

Mr. Raddock. Yes.

Mr. Kennedy. Did you discuss this matter with Charles Johnson of the Carpenters' Union?

Mr. Raddock. The same answer, Mr. Kennedy.

Mr. Kennedy. Did he also discuss this with Mr. Hoffa?

Mr. Raddock. The same answer.

Mr. Kennedy. Did Mr. Johnson go to Gary, Ind., with you?

Mr. Raddock. The same answer, Mr. Kennedy.

[fol. 34] Mr. Kennedy. Our information is that Mr. Johnson went to Gary, Ind., himself.

Could you tell the committee why he went to Gary, Ind., sir?

Mr. Raddock. The same answer, Mr. Kennedy.

Mr. Kennedy. On August 18, 1957, you called Mr. Sawochka again at 12:28 p.m. and spoke to him for 5 minutes, is that right?

Mr. Raddock. The same answer, Mr. Kennedy.

Mr. Kennedy. Then on August 19 you called him—this was the day before the prosecuting attorney announced, Mr. Chairman, that there would be no indictments, this is on August 19—and did you then talk to him, Mr. Sawochka? At the Lake Hotel Building in Gary, Ind., for 7 minutes?

Mr. Raddock. The same answer, Mr. Kennedy.

Mr. Kennedy. And then did you return to Chicago on that date, August 19, at Carpenter expense and register once again at the Hotel Drake?

Mr. Raddock. The same answer, Mr. Kennedy.

Mr. Kennedy. Our information is that you did. Is that correct?

Mr. Raddock. The same answer, Mr. Kennedy.

Mr. Kennedy. What were you doing out in Chicago at that time, in August, August 19?

Mr. Raddock. The same answer, Mr. Kennedy.

Mr. Kennedy. And during this period of time you were keeping in touch with Mr. Hutcheson, were you not, and keeping him advised as to what you were doing?

Mr. Raddock. The same answer, Mr. Kennedy.

Mr. Kennedy. And the prosecuting attorney made his announcement on August 20, 1957, is that right, that there would be no prosecution?

Mr. Raddock: The same answer.

Mr. Kennedy. Did you then continue to be in touch with Mr. Sawochka?

Mr. Raddock. The same answer.

Mr. Kennedy. Could you tell us what you were discussing with Mr. Sawochka after August 20?

[fol. 35] Mr. Raddock. The same answer.

Mr. Kennedy. Were there certain financial arrangements that needed to be ironed out after August 20?

Mr. Raddock. The same answer.

Mr. Kennedy. What part did you play in the restitution of the \$78,000 to the State of Indiana?

Mr. Raddock. The same answer.

Mr. Kennedy. Did you handle that for the Carpenters?

Mr. Raddock. The same answer.

Mr. Kennedy. Could you tell the committee how you got involved in that yourself?

Mr. Raddock. The same answer.

Mr. Kennedy. Did you handle any of this money which was restored to the state?

Mr. Raddock. The same answer, Mr. Kennedy.

Mr. Kennedy. In fact, you were employed to fix this case, were you not, Mr. Raddock?

(The witness conferred with his counsel.)

Mr. Raddock. The same answer, Mr. Kennedy.

Mr. Kennedy. That is all for now, Mr. Chairman.

The Chairman. Do you wish to make any statement?

Mr. Raddock. Senator McClellan, I appreciate your gesture very much. I would like to prepare in the next few hours a factual statement concerning yesterday's testimony.

The Chairman. You will be recalled again. I just wanted to know whether you wanted to make any statement now in

connection with these matters about which you invoked the fifth amendment.

You will be given another opportunity to testify, but I just wondered now, after the questions have been asked you which carry with them very definite implications that would implicate you in an enterprise or in a project that would be improper insofar as the use of union funds in the judgment of the Chair, at least, I wondered if you wanted to clarify or make any statement in your own interest or to help the efforts of the committee with respect [fol. 36] to the matter about which you have been interrogated here this morning.

Mr. Raddock. No, sir, Senator McClellan; and I thank you very much for your kindness.

The Chairman. All right. You may stand aside for the present. Call the next witness.

Mr. Kennedy. Mr. Chairman, we have an affidavit which would be of some interest in connection with this matter.

Mr. Waldman. Is it my understanding that the witness is directed to remain?

The Chairman. Yes; we are going to try to conclude, but we may need him.

Senator Curtis. May I ask 2 or 3 questions?

The Chairman. Pardon me, Senator Curtis."

Mr. Tuttle: May I interpose at this moment because the questions that are about to be asked are on an entirely different line and have to do with the book which has been referred to as "The Portrait of an American Labor Leader" and the saga of the United Brotherhood of Carpenters and Joiners of America. It is my position that the interrogation concerning that book which, at a later point, is developed at considerable length, is wholly extraneous to this matter of what is referred to by Mr. Kennedy and the Chairman as the land matter, the highway matter out in Indiana and the questions that are the subject of the pending indictment before Your Honor in no way relates to this book.

I say that the inquiries concerning the book of Mr. Raddock and of others occupy a vast space in this record so that I am not in the position of merely objecting to two or three casual questions on that subject but to an immense

line of inquiry which has no connection at all with the land matter here at this particular instance of just one or two questions by Mr. Curtis which he injected after the witness had been excused by the Chairman.

They are minor questions but I didn't want to have them read into this record so as to create the impression that I am taking any position as to this book other than the one of opposing all of the questions asked by the Committee concerning it on the ground they are irrelevant and immaterial [fol. 37] and in no way affecting the propriety of the witness' refusal to answer the questions which are set forth in the indictment and which relate to entirely different matter.

So far as these particular questions are concerned, there are just two or three. They may perhaps be read but I do not wish to have my position obscured about the book.

Your Honor may desire to rule on that question when the bulk of the questions concerning the book come along which will be later.

Mr. Hitz: I have nothing to say. I don't understand Mr. Tuttle to object to this. I understand he just wants to state his position.

The Court: I understand that he is objecting to it on the ground of its relevance. Though he is insisting because there is not any mass of that testimony now, he is not making such a strenuous objection as he will when the testimony that he does object to assumes greater proportions. That is what I think he said.

Mr. Tuttle: Your Honor has exactly stated my position. I do not like to quibble over two or three questions that were injected and make a point of those provided my position about them is thoroughly understood.

Mr. Hitz: Mr. Tuttle has been addressing himself to either 12 or 15 lines of testimony and after those lines of testimony, I mean actually lines in this book—after that it is agreed by Mr. Tuttle and myself we would proceed to read to the end of Mr. Raddock's testimony.

Mr. Tuttle: May I suggest to Mr. Hitz, Your Honor, that he can cut this Gordian knot by leaving out those questions by Mr. Curtis and proceed to where we are agreed he may continue the reading.

Mr. Hitz: We intend to offer all of the testimony of Mr. Hutcheson in this volume and at that time it will be the testimony that was given with respect to the biography that was written and delivered by Mr. Raddock. It shows the beginning, as far as the Union funds are concerned and so far as the Committee was aware, of the connection between Mr. Raddock and Mr. Hutcheson, its present president, and the defendant and the Union funds that were funneled toward Mr. Raddock. I think it is extremely important, both to the understanding of the context and also [fol. 38] to the particular indictment in question.

There are only one or two questions here. We contend they are admissible here and will be later. They could have been read many times over since the interruption, if I may put it that way.

Mr. Tuttle: Now, wait a moment. I didn't mean to interrupt for the sake of interrupting. I am merely trying to protect my position and I had hoped that Mr. Hitz would aid us in cutting the Gordian knot by leaving the whole issue to be discussed when the bulk of the questions come on the subject of the book and he says they will come and I know he is right in that respect and, at that point, I will ask the privilege of being heard and I know Your Honor will hear, as Your Honor said, any objections. It is immaterial and irrelevant and has no bearing on the indictment.

The Court: Which will get us along quicker, to go ahead and read this with the understanding that if your objections ultimately are sustained that this part of it be stricken or to debate the question now and get it settled so as to cut out this if I rule it should not be admitted?

Mr. Tuttle: I understand that Your Honor will reserve on my objection and consider it later when the matter of the whole book comes under discussion.

The Court: All right, let's do it that way.

By Mr. Hitz:

Q. Mr. Tierney, will you continue to read?

A. (Reading:)

"Senator Curtis. Mr. Raddock, do I understand correctly that you made an intensive study and research of the history of the Carpenter's Union in preparation of your book?

Mr. Raddock. That is correct, Senator Curtis.

Senator Curtis. Did you make a study of the finances of the Carpenter's Union?

Mr. Raddock. In a general way, since I am no fiscal expert.

Senator Curtis. Did you make a study of the growth of their wealth and their capital assets?

Mr. Raddock. In a superficial sense; yes.

Senator Curtis. And did that include their property [fol. 39] wherever it may be, including the State of Florida?

Mr. Raddock. That is correct.

Senator Curtis. Did you find that it was all accounted for and preserved for the benefit of the union throughout the years?

Mr. Raddock. In my estimate, most certainly so.

Senator Curtis. You found nothing to the contrary?

Mr. Raddock. Nothing to the contrary.

Senator Curtis. That is all.

The Chairman. I have an affidavit here which I believe you might be interested in, and might want to make some comment upon. This is an affidavit dated June 24, 1958, from Mr. John D. Hackett. It states:

(The document referred to follows:)

State of Indiana,

County of Marion, ss:

I, John D. Hackett, being duly sworn, upon my oath state that I am presently an employee on the staff of the Indianapolis Times, a newspaper of daily circulation located at Indianapolis, Ind.; that on August 19, 1957, I was employed as a reporter for the said Indianapolis Times newspaper at Indianapolis, Ind., and on said day was assigned to rewrite duty, and that on said day at 9:45 a.m. I did receive an anonymous phone call while stationed at my assigned desk in the offices of the Indianapolis Times, wherein such

anonymous phone call I did hear a male voice state the following:

'Thought you people would like to know that Gary Carpenter's case has been all taken care of by the Teamsters. There will be no indictment today. You can check the telephone room in Chicago and find that Max Rattock put through a call to Charles Johnson, Jr., last night. This came right after the Teamsters had a meeting in Gary last Wednesday night.'

At this point of the anonymous caller's statement, I stated to him:

'We are very much interested! Who are you and will you give me your name?'

[fol. 40] The same male voice then replied as follows:

'Me? I'm connected with it and I can't give you my name. Check it out and see.'

This was the end of the conversation with nothing more being said by either the anonymous male caller or myself, as the said anonymous caller terminated the conversation.

I hereby assert that the above facts, including conversation, are true in substance and in fact, as this affiant is informed and verily believes.

(S) John D. Hackett.

Subscribed and sworn to before me this 24th day of June 1958.

Olive Ella Ballard
Notary Public, Marion County, Ind.

My commission expires December 16, 1961.

The Chairman. Mr. Raddock, were you the one that made the anonymous call?

(The witness conferred with his counsel.)

Mr. Raddock. The same answer, Senator McClellan.

The Chairman. This says that Max Raddock put through a call 'to Charles Johnson, Jr., last night.'

Would you like to deny that?

Mr. Raddock. The same answer, Senator.

The Chairman. You don't want to deny it. I get some anonymous calls, too, you know, where things are said to you that may not be true.

This anonymous caller, if it wasn't you, yourself, certainly used your name here, according to this sworn testimony, and said you 'put through a call last night to Charles Johnson.' Would you want to deny that you did that?

(The witness conferred with his counsel.)

The Chairman. All right. Do you want to deny that you put through that call?

(The witness conferred with his counsel.)

Mr. Raddock. The same answer, Senator McClellan.

[fol. 41] The Chairman. This anonymous call here is quite significant.

Whoever did the calling evidently had the right information, because I believe it was the next day that it was announced officially that they would not be indicted. If you have some information about that that you think would be helpful to us, we would appreciate it if you would give it.

(The witness conferred with his counsel.)

Mr. Raddock. The same answer, Senator McClellan.

The Chairman. O.K. Is there anything further, Senator Curtis?

Senator Curtis. No.

The Chairman. All right. Stand aside for the present. Call the next witness.

Mr. Kennedy. Mr. Sawochka.

The Chairman. Be sworn, please. You do solemnly swear the evidence you shall give before this Senate select committee shall be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. Sawochka. I do.

TESTIMONY OF MICHAEL SAWOCHKA, ACCOMPANIED BY
COUNSEL, HARRY CLIFFORD ALLDER

The Chairman. State your name, your place of residence, and business or occupation.

Mr. Sawochka. My name is Michael Sawochka, I reside at 2500 West 41st Avenue, Gary, Ind. I am secretary-treasurer of the teamsters Local 142.

The Chairman. Thank you very much.

You have counsel present?

Mr. Sawochka. Yes, sir.

The Chairman. Identify yourself, Mr. Counsel.

Mr. Alder. My name is Harry Clifford Alder, a member of the bar of Washington, D. C. I have an office at 401 Third Street, NW.

The Chairman. Proceed, Mr. Kennedy.

Mr. Kennedy. You are in the Teamsters Union, you are a member of the Teamsters Union?

Mr. Sawochka. Yes, sir.

[fol. 42] Mr. Kennedy. What union is it?

Mr. Sawochka. Teamsters 142. I am secretary-Treasurer.

Mr. Kennedy. How long have you held that position?

Mr. Sawochka. About 27 years.

Mr. Kennedy. You have been secretary-treasurer for 27 years?

Mr. Sawochka. Not as secretary-treasurer, but as an officer, steward, and finally secretary-treasurer.

Mr. Kennedy. How long have you been secretary-treasurer?

Mr. Sawochka. Since 1941.

Mr. Kennedy. And how often do they have an election in that local?

(The witness conferred with his counsel.)

Mr. Sawochka. Our elections in Local 142 over a period of years, Mr. Kennedy, have varied. At one time we had annual terms, and a change in 3 years, and now we elect our officers every 5 years.

Mr. Kennedy. When were you last elected.

Mr. Sawochka. I was elected in December of 1957.

Mr. Kennedy. Did you have an opponent, any opposition at that time?

Mr. Sawochka. I had no opponent.

Mr. Kennedy. Did you, prior to that time?

Mr. Sawochka. Yes. At one time. I was originally elected by one vote. Several years later I was defeated by 12 votes. I came back later on and won by a pretty decent majority and have been there since.

Mr. Kennedy. When was the last time you had opposition?

Mr. Sawochka. 1941.

Mr. Kennedy. 1941 was the last time you ever had opposition?

Mr. Sawochka. Yes. I might just say this, if I may, Mr. Chairman, that there has been times or occasions, rather, where there was someone nominated.

However, he was not eligible in accordance with the constitution of our organization.

But I have had actually no opposition since 1941.

Mr. Kennedy. Any opposition that has been nominated [fol. 43] has been ruled ineligible under the constitution; is that right?

Mr. Sawochka. Only one time, sir.

Mr. Kennedy. When was that?

Mr. Sawochka. That was in 1957.

Mr. Kennedy. 1957?

Mr. Sawochka. That is right.

Mr. Kennedy. Why were they ineligible?

Mr. Sawochka. Nonpayment of dues.

Mr. Kennedy. By the first of the month?

Mr. Sawochka. Our by laws provide our dues are payable quarterly in advance on or before the 15th day of the first month of each quarter, and this particular individual that was a potential candidate had not had his dues paid up for quite some time."

The Court: Mr. Tierney, try to find a convenient place to stop, will you? I have an executive meeting at one o'clock and I have got to eat lunch beforehand and several other things to do so I have got to take a recess as soon as I conveniently can.

Mr. Hitz: I believe four more lines ought to do it.

The Court: All right, finish up the four lines.

The Witness: (Reading:)

"Mr. Kennedy. How long had he been in the Teamsters?

Mr. Sawochka. I don't recall offhand.

Mr. Kennedy. A number of years?

Mr. Sawochka. Yes."

The Court: We will resume and I will have to recess until two o'clock on account of the executive meeting of the Judges.

(Thereupon, the trial was recessed at 12:20 o'clock p.m., until 2:00 o'clock p.m., of the same day.)

After Recess

(The Court reconvened, pursuant to luncheon recess, at 2:00 o'clock p.m.)

Thereupon PAUL J. TIERNEY resumed as a witness, and having been previously sworn, was further examined and [fol. 44] testified as follows:

Direct examination (resumed).

By Mr. Hitz:

Q. What page are you on?

A. Page 12034, at the bottom of the page.

Q. And we want you to read without omission.

A. (Reading:)

"Mr. Kennedy. Did you just purchase some property? Did your Teamsters Local just purchase some property out in Gary, Ind.?

(The witness conferred with his counsel.)

"Mr. Sawochka. Mr. Kennedy—

Mr. Kennedy. Let me see if I can get some answers from you. I will strike that question. Do you know the company called the 1300 Broadway Corp.?

(The witness conferred with his counsel.)

“Mr. Sawochka. At this time, Mr. Kennedy, on the advice of our counsel, I respectfully decline to answer the question and exercise my privilege under the fifth amendment of the United States Constitution not to be a witness against myself.

Mr. Kennedy. Do you know the Mid-City Investments, Inc.?

Mr. Sawochka. At this time, on the advice of counsel, I respectfully decline to answer the question and exercise my privilege under the fifth amendment of the United States Constitution not to be a witness against myself.

Mr. Kennedy. Did you just purchase some property from that company or purchase some property from that company for \$0,000?

Mr. Sawochka. At this time, on the advice—

Mr. Kennedy. With union funds. The union, did they just purchase some property from that company for \$40,000?

—Mr. Sawochka. Again at this time, on the advice of counsel, I respectfully decline to answer the question and exercise my privilege under the fifth amendment of the United States Constitution not to be a witness against myself.

Mr. Kennedy. Do you know Mr. Max Raddock?

Mr. Sawochka. On the advice of counsel, I respectfully decline to answer the question and exercise my privilege [fol. 45] under the fifth amendment of the United States Constitution not to be a witness against myself.

Mr. Kennedy. Did Mr. Max Raddock speak to you about fixing the case of the Carpenters in Lake County?

Mr. Sawochka. At this time, on the advice of counsel, I respectfully decline to answer the question and exercise my privilege under the fifth amendment not to be a witness against myself.

The Chairman. The Chair will ask you if you honestly believe that if you gave truthful answers to these questions, that a truthful answer might tend to incriminate you.

Mr. Sawochka. Mr. Chairman, I honestly believe that if I am forced to answer the question, that I may be forced to be a witness against myself in violation of my rights and

privileges under the fifth amendment of the United States Constitution.

The Chairman. You state that you honestly believe that under oath?

I say, you state under oath that you honestly believe what you have just read there?

Mr. Sawochka. Yes.

The Chairman. Proceed.

Mr. Kennedy. Did you discuss the matter of the Carpenters' indictments with Mr. James Hoffa, the International President of the Teamsters?

Mr. Sawochka. On the advice of counsel, I respectfully decline to answer the question and exercise my privilege under the fifth amendment of the United States Constitution not to be a witness against myself.

Mr. Kennedy. Did he tell you that you should give every assistance to Mr. Hutcheson or his representatives, Mr. Raddock, or Mr. Charles Johnson, Jr.?

Mr. Sawochka. Again on the advice of counsel, Mr. Kennedy, I respectfully decline to answer the question and exercise my privilege under the fifth amendment of the United States Constitution not to be a witness against myself.

Mr. Kennedy. Didn't you then have conversations and conferences with Mr. Raddock and Mr. Charles Johnson?

[fol. 46] Mr. Sawochka. On the advice of counsel, I respectfully decline to answer the question and exercise my privilege under the fifth amendment of the United States Constitution not to be a witness against myself.

Mr. Kennedy. And didn't you have conversations directly with Mr. Hutcheson himself in connection with this matter?

Mr. Sawochka. Again on the advice of counsel I respectfully decline to answer the question and exercise my privilege under the fifth amendment of the United States Constitution not to be a witness against myself.

Mr. Kennedy. Would you tell us what your attorney, Mr. Joseph P. Sullivan, had to do with this matter?

Mr. Sawochka. On the advice of counsel I respectfully decline to answer the question and exercise my privilege under the fifth amendment of the United States Constitution not to be a witness against myself.

Mr. Kennedy. Mr. Sullivan is attorney for your local; is he not?

(The witness conferred with his counsel.)

Mr. Sawochka. Again on the advice of counsel I respectfully decline to answer the question and exercise my privilege under the fifth amendment of the United States Constitution not to be a witness against myself.

The Chairman. I think that is a matter of full knowledge; if you want to take the position that to admit that he is an attorney for your local might tend to incriminate you—

Mr. Sawochka. I honestly believe, Mr. Chairman, that if I am forced to answer the question, I may be forced to be a witness against myself in violation of my rights and privileges under the fifth amendment of the United States Constitution.

The Chairman. The fact can easily be established, I think, by other proof. Proceed.

Mr. Kennedy. According to the information we have, Mr. Chairman, Mr. Sawochka was continuously in touch with Mr. Raddock during the period of time just prior to the indictment being dismissed, and for some period of time afterwards.

Isn't that correct?

[fol. 47] Mr. Sawochka. On the advice of counsel I respectfully decline to answer the question and exercise my privilege under the fifth amendment of the United States Constitution not to be a witness against myself.

Mr. Kennedy. He contacted you continuously and you also contacted him; is that right?

Mr. Sawochka. Again, Mr. Kennedy, on the advice of counsel I respectfully decline to answer the question and exercise my privilege under the fifth amendment of the United States Constitution not to be a witness against myself.

Mr. Kennedy. And you also made contacts with both Mr. Charlie Johnson, Jr., and Mr. Hutcheson in connection with this matter?

Mr. Sawochka. On the advice of counsel I respectfully decline to answer the question and exercise my privilege

under the fifth amendment of the United States Constitution not to be a witness against myself.

Mr. Kennedy. It is true, is it not, that you played a major role in the restitution of the money to the State of Indiana?

Mr. Sawochka. Mr. Kennedy, on the advice of counsel I respectfully decline to answer the question and exercise my privilege under the fifth amendment of the United States Constitution not to be a witness against myself.

The Chairman. Do you know the amount of money that was paid in restitution?

Mr. Sawochka. On the advice of counsel I respectfully decline to answer the question, and exercise my privilege under the fifth amendment of the United States Constitution not to be a witness against myself.

The Chairman. Do you have any questions, Senator Curtis?

Senator Curtis. I think not.

Mr. Kennedy. Do you know Mr. Holovachka, the prosecuting attorney?

Mr. Sawochka. On advice of counsel I respectfully decline to answer the question and exercise my privilege under the fifth amendment of the United States Constitution not to be a witness against myself.

Mr. Kennedy. You personally contacted Mr. Holovachka [fol. 48] frequently during this period of time; did you not?

Mr. Sawochka. Again, Mr. Kennedy, on the advice of counsel I respectfully decline to answer the question and exercise my privilege under the fifth amendment of the United States Constitution not to be a witness against myself.

Mr. Kennedy. And didn't you, starting on August 13, 1957, or thereabouts, call the prosecuting attorney, both at his office and at his unlisted telephone number?

Mr. Sawochka. On the advice of counsel I respectfully decline to answer the question and exercise my privilege under the fifth amendment of the United States Constitution not to be a witness against myself.

Mr. Kennedy. And wasn't this after you were contacted by Mr. Hoffa and Mr. Raddock?

Mr. Sawochka. On the advice of counsel, Mr. Kennedy, I respectfully decline to answer the question and exercise my privilege under the fifth amendment of the United States Constitution not to be a witness against myself.

The Chairman. Are there any further questions?

If not, thank you.

Call the next witness.

Mr. Tuttle: May I at that point ask Mr. Hitz, with Your Honor's permission, to join me in clarifying that the Union fund referred to in the inquiry by Mr. Kennedy, where Mr. Kennedy says, "Did you just purchase some property from that company?" or purchase some property for that company for \$40,000 with Union funds?" that the Union funds referred to by Mr. Kennedy were Teamster funds?

Mr. Hitz: That is my understanding but I would like to get it from the witness.

That's correct, is it not?

The Witness: That's correct.

The Court: What kind of funds?

Mr. Hitz: Teamster Union funds, not Carpenter Union funds.

By Mr. Hitz:

Q. Will you read the next sentence, please?

A. (Reading:)

[fol. 49] "The Chair will state to the witness and his counsel, you may be recalled, but we hope to finish today. But you better wait."

Mr. Hitz: We just concluded reading on page 12037, Your Honor.

By Mr. Hitz:

Q. Now, that terminated for the 26th of June the testimony that is at all applicable to our trial here today, didn't it?

The rest was more or less administrative business for the committee, and so on?

A. That's correct.

Q. Or, at least, it didn't bear on this subject?

A. That's correct.

Q. Now, will you turn to page 12041:

Mr. Tuttle: With Your Honor's permission, Mr. Hitz, I don't believe you intended to say that that was all the testimony on June 26th because Mr. Blair testified on June 26th.

Mr. Hitz: Just a moment:

No, I did not mean to say that, and I will correct it, Your Honor.

On page 12041, which is the next bit of testimony that could have any bearing upon this matter, we are omitting the latter part of 12037, all of 12038 and 12039, and on page 12041 there is headed, "Monday, June 9, 1958, is there not, some testimony from Charles Johnson, Jr., which was read into this record, still having in mind that this is the hearing day of June 26, 1958:

Am I correct in that?

The Witness: That's correct.

By Mr. Hitz:

Q. And Mr. Johnson's testimony, although headed "June 9, 1958," for the reason I have indicated, goes on over to page 12045, at which point in this hearing record it is noted "Hearings of June 26, 1958, continued."

Actually this is merely an insert into the date of June 26th, isn't it, Mr. Tierney?

A. That's correct.

Q. And would you read this insertion of the earlier testimony of Mr. Johnson, Jr., as contained on page 12041?

A. (Reading:)

[fol. 50] "INVESTIGATION OF IMPROPER ACTIVITIES IN THE
LABOR OR MANAGEMENT FIELD.

(On June 9, 1958, Charles Johnson testified in executive session before the Select Committee on Investigation of Improper Activities in the Labor or Management Field. This testimony was made public by the members of the select committee on July 26, 1958, and follows below)

Monday, June 9, 1958

United States Senate,

Senate Select Committee on Improper Activities, in the
Labor or Management Field, Washington, D. C."

Mr. Hitz: Excuse me a moment:

With Mr. Tuttle's agreement, if I have it, I think we can admit the information as to where it took place and who was present. We don't have any quorum there.

Mr. Tuttle: Certainly.

You can start right in, if you wish, at the top of 12042.

Mr. Hitz: I wonder if we can't get Mr. Johnson under oath here.

Mr. Tuttle: Oh, yes.

By Mr. Hitz:

Q. Begin reading where it says "The Chairman. The hearing will be in order," just below the middle.

A. (Reading:)

"The Chairman. The hearing will be in order.

Mr. Kennedy. Mr. Charlie Johnson.

The Chairman. All right, Mr. Johnson.

Be sworn, please.

You do solemnly swear the evidence you shall give before this Senate select committee shall be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. Johnson. I do.

**TESTIMONY OF CHARLES JOHNSON, JR., ACCOMPANIED
BY COUNSEL, F. JOSEPH DONOHUE**

(Other counsel present during the taking of the testimony were Charles B. Tuttle, of Breed, Abbott & Morgan, [fol. 51] 15 Broad Street, New York, N. Y., Francis X. Ward, general counsel, United Brotherhood of Carpenters and Joiners of America, Indianapolis, Ind., 222 East Michigan Street, Indianapolis, Ind.; and Thornton G. Land, of Breed, Abbott & Morgan, 15 Broad Street, New York, N. Y., of counsel for the United Brotherhood of Carpenters and Joiners of America.)

The Chairman. State your name, your place of residence, and business or occupation.

Mr. Johnson. Charles Johnson, Jr., 1025 Fifth Avenue, New York, N. Y. I am president of the New York District Council of Carpenters.

The Chairman. Mr. Reporter, read to Mr. Johnson and his counsel the preliminary statement made by the Chair and the chief counsel at the beginning of this session.

(The preliminary statement was read by the reporter, as requested.)

The Chairman. Mr. Johnson, you have counsel present?

Mr. Johnson. I do, sir.

The Chairman. Identify yourself for the record, please.

Mr. Donohue. I am F. Joseph Donohue, a member of the bar of the District of Columbia. I appear as counsel for Mr. Johnson.

The Chairman. All right, Mr. Kennedy, proceed.

Mr. Kennedy. Mr. Johnson, how long have you been with the Carpenters' Union?

Mr. Johnson. 44 years.

Mr. Kennedy. You are familiar with the fact, are you not, that Mr. Hutcheson, Mr. Chapman, and Mr. Blajer got into some difficulty in the State of Indiana in connection with certain road situations there?

(The witness conferred with his counsel.)

Mr. Johnson. I read about it in the paper, sir.

Mr. Kennedy. Did you have any discussions with Mr. Raddock in connection with that matter?

(The witness conferred with his counsel.)

Mr. Kennedy. Counsel, I think he would know the answer to that himself. That is not a legal question.

Mr. Johnson. On the advice of my counsel, sir, I decline [fol. 52] to answer the question upon the ground my answer might tend to incriminate me.

Mr. Kennedy. How long have you known Mr. Raddock?

(The witness conferred with his counsel.)

Mr. Johnson. Upon the advice of my counsel, I decline to answer the question upon the ground my answer might tend to incriminate me, sir.

The Chairman. Mr. Johnson, may we inquire if it is your purpose to invoke the fifth amendment privilege to all pertinent questions regarding this matter?

(The witness conferred with his counsel.)

Mr. Johnson. Yes, sir.

Senator Curtis. May I inquire, Mr. Chairman?

The Chairman. Senator Curtis.

Senator Curtis. Is there any indictment pending against you at the present time?

Mr. Johnson. No, sir.

Senator Curtis. To your knowledge, is there any investigation by State or Federal prosecuting authorities of any of your activities at the present time?

Mr. Johnson. I have no knowledge of such, sir.

Mr. Kennedy. Could I ask a question?

Would Mr. Johnson answer any questions regarding his personal affairs, or is it just this one phase of it?

Mr. Donohue. At the moment, Mr. Kennedy, it is just this one phase of the inquiry.

Mr. Kennedy. Where he would invoke the fifth amendment?

Mr. Donohue. Yes."

Mr. Hitz: I think that's enough.

May the record show we have stopped reading at the top of page 12043.

Mr. Tierney, would you turn to page 12046.

And begin with the large-type testimony of Joseph P. Sullivan.

The Witness (Reading):

[fol. 53] "TESTIMONY OF JOSEPH P. SULLIVAN, ACCOMPANIED BY HARRY CLIFFORD ALLDER, COUNSEL.

"The Chairman. State your name, your place of residence and business or occupation.

Mr. Sullivan. My name is Joseph P. Sullivan, 1800 Central Avenue, Whiting, Ind.; occupation, lawyer.

The Chairman. Mr. Sullivan, you also have counsel with you."

Mr. Hitz: Excuse me just a minute.

I think, Mr. Tierney, that the document you are reading from will show that we are still in the hearing day of June 26, 1958, as is noted in the hearings that you are reading from on page 12045. Right?

The Witness: That's correct.

Mr. Hitz: All right, sir. Now, will you pick up where I interrupted and read without omission.

Mr. Tuttle: And Mr. Sullivan is under oath.

Mr. Hitz: Mr. Tuttle suggests that we put Mr. Sullivan under oath.

Mr. Tuttle: Not that we put him under, but he was put under oath.

By Mr. Hitz:

Q. Can you now testify that just before the testimony you were reading it is noted that the Chairman swore Mr. Sullivan?

A. That's correct.

Q. All right, now will you read without omission.

The Witness (Reading):

"The Chairman. Mr. Sullivan, you also have counsel with you.

Mr. Sullivan. Yes, sir.

The Chairman. Let the record show that Mr. Alder is appearing as counsel for the witness, Mr. Sullivan. All right, Mr. Kennedy, proceed.

Mr. Kennedy. Mr. Sullivan, you practice law in Gary, Ind., do you?

Mr. Sullivan. No, sir; Whiting, Ind.

Mr. Kennedy. Do you do any legal work for the Teamsters Union in Gary, Ind.?

[fol. 54] Mr. Sullivan. Yes, sir.

Mr. Kennedy. What union is that, what local?

Mr. Sullivan. Local 142 of the Teamsters.

Mr. Kennedy. Who is head of that local?

Mr. Sullivan. Well, I presume you are alluding to the secretary-treasurer, Mr. Sawochka.

Mr. Kennedy. Mr. Sullivan, do you know Mr. Maxwell Raddock?

Mr. Sullivan. Yes, sir.

Mr. Kennedy. How long have you known him?

Mr. Sullivan. Approximately a year or thereabouts.

Mr. Kennedy. When did you first meet him?

Mr. Sullivan. Well, I can't define the exact date, sir, but I would say, roughly, it would be a year or so ago.

Mr. Kennedy. About August of 1957? Would that be about right?

Mr. Sullivan. That could be possible.

Mr. Kennedy. Where did you meet him?

Mr. Sullivan. Pardon me, sir.

Mr. Kennedy. Where did you meet him?

Mr. Sullivan. In Indiana.

Mr. Kennedy. Under what circumstances?

Mr. Sullivan. Well, just simply a meeting, through a mutual friend.

Mr. Kennedy. Who was the mutual friend?

Mr. Sullivan. May I, sir, consult with counsel, please?

(The witness conferred with his counsel.)

Mr. Sullivan. The person who introduced me to Mr. Raddock was a client of mine, sir.

Mr. Kennedy. Who was it that introduced you to Mr. Raddock?

Mr. Sullivan. I believe, sir, to identify the client by name would violate the privilege existing between attorney and client.

I believe, sir, that I am under responsibility to that client in the light of the fact that he asked me not to divulge his identity.

The Chairman. Did he introduce you in connection with his own business, a matter for which you were retained? [fol. 55] Mr. Sullivan. I am sorry, sir. Will you repeat the question?

The Chairman. You said you were introduced to him, to Mr. Raddock, by a client of yours. Was that introduction in connection with your client-attorney relationship in connection with the business that you had been retained by your client to handle?

Mr. Sullivan. I believe there, again, sir, I must assert the privilege existing between this client and myself. The relationship was one of the attorney and client, and I believe to divulge it would be, frankly, indirectly, possibly divulging what I could not do directly.

The Chairman. There is a privileged status then between an attorney and client, with respect to anything that

the client told you with respect to the business you handled for him, that is true.

But just the fact that a fellow is your client, it has never been my understanding of it that that would preclude you from testifying as to matters outside of that relationship.

You might have a client, and I will use this as an illustration, who may get into some trouble or did something in your presence wholly unrelated to the relationship of client and attorney.

Certainly you would not be privileged not to tell what you see by reason of the fact that the man happens to be your client, or anything that he does that is not in relation to that.

It is a confidential relationship where a client tells you something in confidence about his affairs which is privileged. We have had this question up before this committee and also before the Senate Investigating Subcommittee, and we have always ruled that the witness will be required to tell who his client is. We don't know whether the relationship can be established. If it can be, of course, it will be respected and any rights under it and privileges under it will be observed by this committee.

Mr. Sullivan. Well, Mr. Chairman, I am generally in accord with your premise on the attorney-client relationship and your statement of such. Because of the meeting, and the meeting being between this client of mine and Mr. Raddock, and because of the fact that I was there on an attorney relationship with my client, it would be hard, frankly difficult, and I think perhaps contrary to all the ethics of [fol. 56] the attorney and client relationships for me to not claim the privilege.

The Chairman. What you are saying in effect is, and I wholly disagree with it—you have Mr. Alder present here today as your attorney. Suppose he introduced you to me and that is the first time you ever met. If that happens, and a year later someone asks you when you first met me, and you say, 'Well, a client of mine introduced me.'

Mr. Alder. We agree to that, Senator, that he would have to testify about it. But he just finished saying that as a result of the attorney-client relationship existing be-

tween him and this person you are asking about, he met Mr. Raddock, because of that.

It was only because of that and through that that he talked to Mr. Raddock at all, and since being here in front of the executive session before and asked this question, he has gone to that client and asked the client again could he not divulge his name, and the client said, 'No, you cannot, because I told you before you could not divulge my name at any time concerning any of the matters that you have represented me on.'

The Chairman. That is stretching pretty thin, if that is the meaning of the law.

Mr. Alder. This is a case in this jurisdiction, Senator, which says exactly that, which has not been changed. The case has been standing for 40 years.

The Chairman. I will frankly confess I have not practiced law for several years, and there have been many decisions that changed the Constitution and a lot of other things since I was actively engaged in the practice of law, and you could be correct. But I still maintain that my own view is it is stretching it pretty thin. I will not undertake at the moment to argue with you. We will make the record. The Chair will order and direct you to answer the question with the approval of the committee. We will make the record and then we will determine about it, if you want to make that kind of a record.

Mr. Sullivan. Mr. Chairman, I must stand on the same answer I gave in executive session, and also here in public session, and for the very same reason, that to divulge the identity of this client would, in effect, open the door and [fol. 57] constitute a breach of the attorney-client relationship that exists between he and I.

I might say this to you, sir, so I may not seem impertinent, that since the executive session I have gone to this client to ask him whether or not I had his consent and he refused the consent. I so act accordingly.

The Chairman. The order still stands. We are making the record. I don't understand that one can come into court or before a tribunal and announce that he has a client whose name he can't disclose. I don't know how a court can deal with it or how this committee can deal with it to

determine whether a client-attorney relationship actually exists or not. That is not a challenge to your saying he is your client, but I am trying to rationalize this into its ultimate legal potential.

Any time you would bring a lawyer up, he could say 'Well, I have a client, but I can't afford to testify because my client introduced me to that fellow,' and then not disclose the name of the client.

That would be a complete barrier in back of which the court could not go, or the tribunal making the inquiry could not go to ascertain whether the witness is actually telling the truth about having such a client.

Mr. Alder. May I answer that, Senator?

The Chairman. Yes; you may. I don't want to belabor it.

Mr. Alder. The case in the District of Columbia, the United States court of appeals, takes up that point, and says that the other side of this matter, could, by cross-examination or by producing evidence, refute the fact that he was claiming the privilege correctly or not, whether it was true. If that were true, then he would be prosecuted for perjury.

The Chairman. Well, I don't think anyone has a right to come into court and commit perjury.

Mr. Alder. No; but they took up the exact point that you have raised, Senator.

The Chairman. I am not denying what you are saying. I am not familiar with the decision, but I am going to make the record.

If I find that your position is right, the record will stand, of course. And if I find that your contention is in error, [fol. 58] then the committee will be free to take such action as it deems appropriate within the limits of its authority.

As I understand the witness, you are refusing to identify the person who introduced you to Maxwell Raddock some time about a year ago, because the person that introduced you was or is your client; is that correct?

Mr. Sullivan. Yes, sir.

The Chairman. To make the record so there will be no misunderstanding about it, the Chair again orders you and directs you to inform this committee now under oath

the name of your client who introduced you to Mr. Raddock.

Mr. Sullivan. Your Honor—I am not used to Senate hearings, and so please forgive me if I address you as your Honor.

Let me say that I say it with all sincerity, though it may not be appropriate to the proceedings at hand. Mr. Senator, I must again refuse to answer any questions by reason of the fact that it would be in violation of the attorney-client relationship, and it would in part more or less do indirectly what I am not privileged as an attorney for my client to do directly.

The Chairman. Proceed, Mr. Kennedy.

Mr. Kennedy. Did you discuss with Mr. Raddock at that time the matters dealing with the possible indictment of certain carpenter officials?

Mr. Sullivan. Pardon me, sir?

Mr. Kennedy. Pardon me what?

Mr. Sullivan. Would you please define as to when?

Mr. Kennedy. When you met with Mr. Raddock, the first time you talked to him.

Mr. Sullivan. The first time I talked to him?

No, sir.

Mr. Kennedy. You did not?

Mr. Sullivan. No, sir.

Mr. Kennedy. Did you meet him by appointment?

Mr. Sullivan. No, sir; it was a very inadvertent meeting.

Mr. Kennedy. Then if you state that, how can you then [fol. 59] possibly claim that you cannot disclose to us who introduced you, if it was just a chance meeting?

(At this point, Senator Curtis entered the hearing room.)

(The witness conferred with his counsel.)

Mr. Sullivan. Mr. Kennedy, the meeting in and of itself was a very chance meeting, as I say. It was not pre-arranged. But because of certain things that came to my knowledge, information subsequent to that, it would be a breach of the attorney-client relationship insofar as my client is concerned and myself as his attorney.

Mr. Kennedy. If the lawyer-client relationship did not exist at that time in connection with the matter you were

discussing, and in your meeting with Mr. Raddock, certainly you should disclose that information to this committee as to who introduced you.

(At this point, Senator Kennedy withdrew from the hearing room.)

(The witness conferred with his counsel.)

Mr. Kennedy. Do you still refuse to do so?

Mr. Sullivan. No.

I am not clear as to the question. I am not refusing to answer anything, sir, that is proper. I don't understand the question, to be perfectly honest about it.

Mr. Kennedy. The point is that if this were just a chance meeting where the subject matter of the lawyer-client relationship was not discussed, did not exist at that time as far as Mr. Raddock is concerned, that this information regarding who introduced you should be disclosed to the committee. You are just like an ordinary citizen. So you meet somebody. The committee is interested in determining who introduced you to him. It is very important in the context of what we are looking into at the present time.

Mr. Sullivan. Well, sir, I have to again claim the same privilege I have before. It is important in the light of the fact that if it were strictly inadvertent meeting without the association of subsequent things that came to my knowledge as an attorney representing the client, I would agree with counsel.

[fol. 60] Mr. Kennedy. Were the subsequent things that came to your knowledge dealing with the possible indictments of certain Carpenter officials in Lake County, Ind.?

Mr. Sullivan. That would certainly be beyond my knowledge, sir.

Mr. Kennedy. Were you an assistant district attorney, prosecuting attorney?

Mr. Sullivan. N. I am this, so we get my status insofar as the prosecutor's office is concerned clear: I am a deputy assigned to the Whiting City court which has, as its duties, the prosecution of misdemeanors only. I have no connection whatever with the criminal court at Crown Point

or any connection with the grand jury proceeding or anything of that sort.

Mr. Kennedy. You do work for the prosecuting attorney's office?

Mr. Sullivan. That is correct, sir.

Mr. Kennedy. Who is the prosecuting attorney?

Mr. Sullivan. Mr. Holpvachka.

Mr. Kennedy. All right. Was Mr. Raddock interested in attempting to prevent the indictment of certain Carpenter officials in Lake County, Ind.?

Mr. Sullivan. Sir, that would be beyond my knowledge.

Mr. Kennedy. Did you have any conversations with Mr. Raddock along those lines?

Mr. Sullivan. No, sir.

Mr. Kennedy. Did you have any conversations with Mr. Raddock along those lines?

Mr. Sullivan. No, sir.

Mr. Kennedy. Did you have any conversations with Mr. Raddock in connection with the possible indictment of certain Carpenter officials?

Mr. Sullivan. No, sir.

Mr. Kennedy. You did not. Did you have any conversation with Mr. Raddock at all regarding the difficulties or problems of Mr. Hutcheson, in Lake County?

Mr. Sullivan. No, sir.

[fol. 61] Mr. Kennedy. How many times did you meet Mr. Raddock?

Mr. Sullivan. Very sincerely, I can't accurately tell you. I would say several times. I am not trying to be evasive, I just don't know.

Mr. Kennedy. I think you are. I don't think you are being at all frank with the committee.

Mr. Sullivan. Do you mean because I can't recall the number of times—

Mr. Kennedy. No; just in the answers you have given in the last few questions.

The Chairman. Is Mr. Maxwell C. Raddock a client of yours?

Mr. Sullivan. No, sir.

The Chairman. Then that relationship never existed between you two.

Mr. Kennedy. What did you discuss the first time you met Mr. Raddock?

Mr. Sullivan. Probably—

Mr. Kennedy. Not probably. What did you discuss?

Mr. Sullivan. To my best recollection, it was a chance meeting. 'This is Mr. So and So.' 'How are you?' 'Where are you from?' 'What do you do?' this and that and that. That was about the extent of it.

Mr. Kennedy. That was all?

Mr. Sullivan. Yes, sir.

Mr. Kennedy. You refuse to tell the committee who introduced you when that was the total gist of the conversation?

Mr. Sullivan. I state to my best recollection that was it.

Mr. Kennedy. You met with him again?

Did you see him again?

Mr. Sullivan. Yes, sir; I did.

Mr. Kennedy. Who was present when you saw him again?

Mr. Sullivan. There again, sir, I must claim the privilege that exists between attorney and client.

The Chairman. Just a moment.

Were all of those present at the next time your clients? [fol. 62] Mr. Sullivan. Pardon me, sir?

The Chairman. You were asked a question as to who was present when you met Mr. Raddock the next time, after the time you had been introduced to him, and you said you declined to answer on account of the client-attorney relationship.

I am asking you: Were all of those who were present at that time your clients?

Mr. Sullivan. No, sir. I have just stated that Mr. Raddock was not. And never has been.

The Chairman. Were any of the others present not your clients?

Mr. Sullivan. To my recollection, no.

The Chairman. How many others were present besides you and Mr. Raddock?

Mr. Sullivan. I would say, sir, to my recollection, three, including myself.

The Chairman. The other two were your clients at that time?

Mr. Sullivan. No, sir; I included myself.

The Chairman. Well, I said the other two. You said there were three.

Mr. Sullivan. Three people, sir.

The Chairman. Well, there were you, Mr. Raddock and one other?

Mr. Sullivan. That is correct, sir.

The Chairman. Was the other man your client at that time?

Mr. Sullivan. Yes, sir.

The Chairman. Proceed, Mr. Kennedy.

Mr. Kennedy. You are not going to give us the name of the other person you met at that time?

Mr. Sullivan. Well, Mr. Kennedy, I don't want to appear impertinent, but the other person I have mentioned is my client.

Mr. Kennedy. What did you discuss?

The Chairman. You have it now that he was there with Raddock and a client of his whom he declines to name. The Chair is going to order and direct him to give the name of his client who was present.

[fol. 63] Mr. Sullivan. I must again claim the same attorney-client relationship and refuse to divulge the name of my client, inasmuch as the divulging of the name would, in effect, be opening the door and creating a breach of that relationship, which I am bound as an attorney to preserve.

I do not have my client's permission to divulge the name.

The Chairman. Proceed.

Mr. Kennedy. What did you discuss with Mr. Raddock at that time?

Mr. Sullivan. This, Mr. Kennedy, would be the second meeting, is that correct?

Mr. Kennedy. Yes, that is right.

Mr. Sullivan. I believe generally it was just general conversation, gossip, that type of thing, nothing beyond that.

Mr. Kennedy. What gossip—come on, Mr. Sullivan, you are not answering any questions here.

Mr. Sullivan. Mr. Kennedy, I don't want to appear to be evading your questions.

Mr. Kennedy. Obviously you are.

Mr. Sullivan. Let me say this to you, when I say gossip certainly it was no secret in Lake County, Ind., that the Carpenters were in some difficulty, and it was in all the newspapers.

Mr. Kennedy. Just answer the question. Is that what you were discussing?

Mr. Sullivan. Yes, sir.

Mr. Kennedy. All right. What were you discussing about the difficulty of the Carpenters?

Mr. Sullivan. I don't think there was any discussion about that.

Mr. Kennedy. Well, what did you discuss about the troubles they were in, then; relate the conversation to the committee.

Mr. Sullivan. Well, the fact that there was this difficulty in Lake County rising out of these alleged violations, which I knew nothing about, had no personal knowledge about, except what information I may know as any citizen may know that reads the newspapers in Lake County. The paper was filled with it.

[fol. 64] Mr. Kennedy. So you discussed that?

Mr. Sullivan. Yes, sir.

Mr. Kennedy. Did you discuss anything else other than that?

Mr. Sullivan. No, sir.

Mr. Kennedy. You just discussed the problems and difficulties of the Carpenters' Union officials?

Mr. Sullivan. Correct, sir.

Mr. Kennedy. Now we are moving along.

The grand jury in connection with this matter was sitting at that time?

Mr. Sullivan. I can't say. I don't know.

Mr. Kennedy. Did you have any further conversations with Mr. Raddock?

Mr. Sullivan. To the best of my recollection—

Mr. Kennedy. That is, after the second meeting.

Mr. Sullivan. Pardon me?

Mr. Kennedy. After the second meeting.

Mr. Sullivan. To the best of my recollection, any subsequent conversations were by telephone.

Mr. Kennedy. Did he telephone you?

Mr. Sullivan. Yes, sir.

Mr. Kennedy. After the second meeting, did you telephone him first, or did he telephone you?

Mr. Sullivan. To the best of my recollection, I believe he telephoned me always.

Mr. Kennedy. You never telephoned him?

Mr. Sullivan. I can't be sure. I don't think so, sir.

Mr. Kennedy. When he called you the first time, what did you discuss?

Mr. Sullivan. This may seem silly, but it is the truth, the same thing, what do you hear, what is going on, what is going on down in Indianapolis.

Mr. Kennedy. Well, it was all about the Carpenters?

[fol. 65] Mr. Sullivan. The same story.

Mr. Kennedy. It was about the Carpenters?

Mr. Sullivan. Anything that anyone could read in the newspapers.

Mr. Kennedy. But it was about the Carpenters, was it?

Mr. Sullivan. Yes.

Mr. Kennedy. You remember that now. And did he call you after that time?

How many times did he call you?

Mr. Sullivan. I can't be sure, Mr. Kennedy. I would say several times.

Mr. Kennedy. Maybe a dozen times?

Mr. Sullivan. I don't believe it was that many.

Mr. Kennedy. Eight times?

Mr. Sullivan. Well, I said I didn't believe it was a dozen. I don't believe it was eight.

Mr. Kennedy. How many times, approximately?

Mr. Sullivan. Well, I can't be sure, sir.

Mr. Kennedy. It was at least eight times, was it not.

Mr. Sullivan. It didn't appear to me to be that long.

Mr. Kennedy. Was it a half-dozen times?

Mr. Sullivan. Well, if you say it was 8, it probably was 8, all to my—

Mr. Kennedy. What did you discuss in the second conversation?

Mr. Sullivan. It was always the same thing.

Mr. Kennedy. You always discussed just the Carpenters?

Mr. Sullivan. Yes.

Mr. Kennedy. Did he ever want you to do anything?

Mr. Sullivan. No, sir.

Mr. Kennedy. The third time, what did you discuss then?

Mr. Sullivan. It was always the same thing.

Mr. Kennedy. About the Carpenters?

Mr. Sullivan. That is right.

Mr. Kennedy. What is the gossip in Lake County?

[fol. 66] Mr. Sullivan. Yes, sir.

Mr. Kennedy. He just wanted to know all the gossip; is that right?

Mr. Sullivan. It appeared to me to be so.

Mr. Kennedy. Were you in touch with Mr. Holovachka, during this period of time—the prosecuting attorney?

Mr. Sullivan. No more than I would be during the time I have been working for him, which encompasses some 6 years or thereabouts.

Mr. Kennedy. You were in touch with him during the period of time?

Mr. Sullivan. Well, of necessity, I would have to be in connection with my job.

Mr. Kennedy. Were you in touch with Mr. Sawochka during this period of time?

Mr. Sullivan. Yes, of course I was.

Mr. Kennedy. Did you discuss the problem of the Carpenters with Mr. Sawochka?

Mr. Sullivan. There again, sir, I can't divulge that because of the fact that it would be a breach of attorney-client relationship.

Mr. Kennedy. Mr. Sullivan, we are looking into what appears to be an illegal, or at least an improper act, in the State of Indiana, and there are union officials involved. You have some very pertinent and important information to offer to this committee. Certainly your cooperation can extend further than it has so far during the course of this interrogation.

Certainly you could tell the committee and give the information to the committee as to whether you discussed the possible indictment of the Carpenters or the difficulty of the Carpenters with Mr. Sawochka, a Teamster Union official?

Mr. Sullivan. Mr. Kennedy, you know from my prior testimony in executive session that Mr. Sawochka is a client of mine, and for that very sacred reason I cannot, as a lawyer, divulge the conversation between him and me.

Mr. Kennedy. I am not asking you what the conversation was. All I am asking you is whether you discussed the situation involving the Carpenters with Mr. Sawochka.

[fol. 67] I am not asking you what he said to you or what you said to him, but I want to know whether you discussed this matter with Mr. Sawochka, because according to our information he was a part in a conspiracy to subvert the laws of the State of Indiana. He is a union official, and, as such, is within the jurisdiction of this committee.

Mr. Sullivan. Sir, for me to divulge by way of answer to your question would be simply indirectly breaching that relationship.

You are a lawyer, Mr. Kennedy, and so am I. I think you can appreciate what I am telling you about an attorney-client relationship.

Mr. Kennedy. No, I cannot appreciate it at all. All this time of contact with Mr. Raddock and just saying that you are gossiping with him on the telephone, and then the other conversations with Mr. Sawochka, you say you can't give us any of that information. Did you do any work for the Carpenters' union during this period of time?

Mr. Sullivan. No, sir; never.

Mr. Kennedy. Did you have any conversations with Mr. Holovachka in connection with the difficulties of the Carpenter officials?

Mr. Sullivan. Only in a civil capacity.

Mr. Kennedy. What do you mean by that?

Mr. Sullivan. As I have already testified in executive session, I made restitution in behalf of my client.

Mr. Kennedy. Then you were acting for the Carpenters' Union?

Mr. Sullivan. No, sir.

Mr. Kennedy. You carried the money to the State of Indiana?

Mr. Sullivan. I believe, sir, it was a check, if my recollection serves me.

Mr. Kennedy. From whom did you get the check?

Mr. Sullivan. I cannot divulge that. That would be, again, a breach of the attorney-client relationship.

Mr. Kennedy. Did you get the check from Mr. Hutcheson?

Mr. Sullivan. I don't even know Mr. Hutcheson.

Mr. Kennedy. Was he a client of yours?

Mr. Sullivan. No, sir.

[fol. 68] Mr. Kennedy. Did you get it from Mr. Chapman?

Mr. Sullivan. No, sir.

Mr. Kennedy. Was he a client of yours?

Mr. Sullivan. No, sir.

Mr. Kennedy. Did you get the check from Mr. Blaier?

Mr. Sullivan. No, sir.

Mr. Kennedy. Was he a client of yours?

Mr. Sullivan. No, sir.

Mr. Kennedy. Those were the three union officials that made the restitution. Did you get the money from any union official?

Mr. Sullivan. That, sir, by way of answer, would be an attempt by indirection to do what I can't answer indirectly, and would be a breach, again, of that same attorney-client relationship.

Mr. Kennedy. Was the Teamsters Union involved directly or indirectly in the restitution of this money?

Mr. Sullivan. There, again, sir, that would follow the same premise. It would be a breach of the attorney-client relationship.

Mr. Kennedy. Did you discuss with Mr. Holovachka the fact that there would be no indictments in connection with this case?

Mr. Sullivan. No, sir.

Mr. Kennedy. When Mr. Holovachka made his announcement, he announced the fact at one time that there was restitution and that there would be no indictments. You say that you made the restitution but never discussed the fact that there would be no indictments?

Mr. Sullivan. No, sir.

Senator Curtis. Mr. Chairman?

The Chairman. Senator Curtis.

Senator Curtis. Do you recall when this restitution was made, the date of it?

Mr. Sullivan. No, sir, I do not. I heard something said here today, and that will be my only means of knowing even an exact date. I think someone this morning said something to the effect of August 20. I think I heard Mr. Kennedy say that this morning. I have no recollection of my own.

[fol. 69] Senator Curtis. Based on your own recollection, was it before or after the announcement that there would be no indictment?

Mr. Sullivan. I would say, Senator Curtis, that I could not be sure. I don't know. I would say this to you, that there was no connection with the restitution and the action of the grand jury.

Senator Curtis. But you don't know which occurred first?

Mr. Sullivan. No, sir, I could not say with exactness.

Senator Curtis. Do you know why restitution was made?

Mr. Sullivan. Well, it was given by way of civil restitution entirely, without any promises whatsoever.

Senator Curtis. Could you tell us whether or not the restitution was made by someone who would have been liable for restitution if a civil action was instituted against them.

Mr. Sullivan. There, sir, I cannot divulge because of the relationship between attorney and client. I do not have the permission of my client to answer that question.

Senator Curtis. That is all, Mr. Chairman.

The Chairman. All right.

Mr. Kennedy. Mr. Sullivan, you were interviewed by Mr. Tierney, were you not?

Mr. Sullivan. Yes, sir.

Mr. Kennedy. And did you state to him that you had no connection whatsoever with the Lake County investigation of the highway scandal and denied at that time that you were the lawyer by whom restitution was made?

Mr. Sullivan. That is correct.

Mr. Kennedy. You did not tell him the truth, is that right?

Mr. Sullivan. That is correct.

Mr. Kennedy. And that interview took place—

Mr. Sullivan. In my office.

Mr. Kennedy. On April 23, at 1:30 p.m., did it not?

Mr. Sullivan. Well, I can't be sure of the date. I cannot be sure of the day. But it was in my office.

Mr. Kennedy. Didn't you immediately after that inter-[fol. 70] view call Mr. Holovachka on the telephone at his unpublished number and discuss the matter with him?

Mr. Sullivan. I have no recollection of calling Mr. Holovachka, and I have no recollection of Mr. Holovachka having an unpublished telephone. If he has, I don't know what it is.

Mr. Kennedy. Did you call him at 3:42 p.m. on April 23?

Mr. Sullivan. Sir, I could not answer that question. I don't even know what I did yesterday, let alone what I did then.

Mr. Kennedy. I would like to find out what you did back in August of 1957. Where you can tell us, you refuse to tell us.

Mr. Sullivan. Well, I am only refusing, sir, on the basis of the attorney-client relationship, and none other.

Mr. Kennedy. That is what you are saying. Shortly after the indictments or the prosecuting attorney, Mr. Holovachka, announced that there would be no indictments in this case, did you handle a land transaction for the Teamsters Union?

Mr. Sullivan. Yes.

Mr. Kennedy. And was that for the purchase of a piece of property in Gary, Ind.?

Mr. Sullivan. Yes, sir.

Mr. Kennedy. You handled the legal aspects of that?

Mr. Sullivan. Strictly the closing of the transaction.

Mr. Kennedy. Was there any appraisal of the property made prior to the time the Teamsters Union purchased that property?

Mr. Sullivan. That would be beyond my knowledge as a lawyer, sir.

Mr. Kennedy. Do you know of any appraisal that was made?

Mr. Sullivan. Do I personally?

Mr. Kennedy. Yes.

Mr. Sullivan. No, sir.

Mr. Kennedy. Did you suggest at that time that an appraisal of the property be made?

Mr. Sullivan. Mr. Kennedy, my only relationship with the transaction was simply to check the title on the closing. I had nothing to do with its inception.

[fol. 71] Mr. Kennedy. How much money did the Teamsters pay for that property?

Mr. Sullivan. To the best of my recollection, \$40,000, 10½ acres of ground.

Mr. Kennedy. What is usually the scale or what has been the scale in Gary, Ind., the connection between the appraised tax value of land and the actual value?

Have you sort of a working scale?

Mr. Sullivan. There used to be years ago kind of a rule of thumb that frankly isn't accurate any more whatever. We lawyers, when I first started to practice, used to use a 3-to-1 ratio that very honestly is no longer practical because real estate in Lake County, Ind., has gone sky high. Its availability is scarce. Inflation is upon us. As a matter of fact, it is not uncommon to pay \$5,000 and more an acre for undeveloped land in the vicinity of Lake County, Ind., what is commonly called the Calumet district. In fact, there are all kinds of transactions going forward every day at that price in that approximate neighborhood.

Mr. Kennedy. That is a long answer, which I appreciate.

Mr. Sullivan. Well, I was trying to tell you about Lake County, Ind.

Mr. Kennedy. Do you know what this land was appraised at, taxwise?

Mr. Sullivan. No, sir; that would be no concern of mine as an attorney.

Mr. Kennedy. You didn't look into that matter at all when you handled the transaction?

Mr. Sullivan. Well, I don't think it was derelict on my part as a lawyer attending to the closing not to pay attention to that. It is not common to do it.

Mr. Kennedy. From whom was this land purchased?

Mr. Sullivan. I believe it was purchased from a concern, to the best of my recollection, called the 1300 something or other, possibly 1300 Realty Corporation, or something like that. The deed is recorded. It speaks for itself.

[fol. 72] Mr. Kennedy. Did you know that the tax appraisal of that land at that time was about \$4,600?

Mr. Sullivan. If you would say so, I dare say that is correct. I don't know.

Mr. Kennedy. And the Teamsters paid \$40,000 for the land?

Mr. Sullivan. Yes, sir.

Mr. Kennedy. Do you know if during that period of time the 1300 Broadway Corp. from whom the Teamsters purchased this land, do you know if they had a financial transaction about that time with a company which was owned, in part, by the prosecuting attorney?

Mr. Sullivan. I would have no knowledge of that at all. I have nothing to do with the 1300 Corp. or nothing to do with the private affairs of the prosecutor.

Mr. Kennedy. Do you know anything about the State Sibley Corp.?

Mr. Sullivan. No, sir.

Mr. Kennedy. Do you know what financial transactions the 1300 Broadway Corp. had with the State Sibley Corp.?

Mr. Sullivan. No, sir; nothing at all.

Mr. Kennedy. You know nothing about that?

Mr. Sullivan. Nothing at all.

Mr. Kennedy. You didn't know that there was a financial transaction going on simultaneously with this purchase of land by the Teamsters?

Mr. Sullivan. No, sir.

Mr. Kennedy. And you wouldn't tell us whether you discussed the problems or the difficulties of the Carpenters with Mr. Sawochka?

Mr. Sullivan. It isn't, Mr. Kennedy, that I wouldn't. I can't. I am an attorney. I dare not, or I would breach my relationship with my client.

Mr. Kennedy. If there was anything improper or illegal in this transaction, in your own activity, you play a major role yourself, Mr. Sullivan. In fairness to yourself, I would think you would want to answer these questions. As you point out, the restitution of the money was done through you.

[fol. 73] You say you weren't representing the Carpenters' Union or any official of the Carpenters. You would have the information that would throw a great deal of light on this subject.

Do you have anything to say?

Mr. Sullivan. Well, I didn't regard that as a question. I regard that as a statement by yourself.

Mr. Kennedy. Well, I am asking you now, do you have anything to say about it?

Mr. Sullivan. Nothing at all, sir. I am at peace with my conscience and with my relationship as a lawyer.

Mr. Kennedy. That is all, Mr. Chairman.

The Chairman. Do you have any questions, Senator Curtis?

Senator Curtis. No; I think not.

The Chairman. All right. You may stand aside for the present.

Call the next witness.

Mr. Kennedy. Mr. O. William Blaier.

The Chairman. Mr. Blaier, come forward, please.

You do solemnly swear that the evidence you shall give before this Senate select committee shall be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. Blaier. I do."

The Court: That looks like a place we could take a little recess.

(Short recess taken.)

The Witness (Reading):

"TESTIMONY OF O. WILLIAM BLAIER, ACCOMPANIED BY
COUNSEL, HOWARD TRAVIS.

"The Chairman. State your name, your place of residence, and your business or occupation.

Mr. Blaier. Oscar William Blaier. My legal voting residence is Philadelphia. I maintain an apartment here in Washington, D. C. I am in the capacity as second general vice president of the United Brotherhood of Carpenters and Joiners of America.

The Chairman. You have your counsel present, Mr. Blaier?

[fol. 74] Mr. Blaier. Yes, sir.

The Chairman. Counsel, identify yourself for the record, please?

Mr. Travis. Mr. Chairman, my name is Howard Travis, from Indianapolis, Ind., with offices at 1011 Fletcher Trust Building. I would like to make a statement, if I may?

The Chairman. I don't know what you want to make. Is it some motion?

Mr. Travis. No, Senator McClellan. I have been advised by counsel for the committee that no personal matters other than the duties of Mr. Blaier as an officer of the Brotherhood of Carpenters, would be inquired into, except certain transactions that might have been incurred between him and the Penn Products Co. or Mercury Oil Co. As I stated to the committee in executive session a couple of weeks ago, Mr. Blaier is one of the defendants in an indictment in Marion County, Ind., involving certain transactions in Lake County, Ind.

With the assurance that there are no questions going to be asked on that subject, I have advised Mr. Blaier that he is perfectly free to testify as to the Penn Products or Mercury Oil transactions without waiving any rights he might have to refuse to testify to other personal matters.

The Chairman. Is Mr. Blaier under indictment?

Mr. Travis. He is.

The Chairman. The subject matter of the indictment will not be gone into, if he feels that it might jeopardize his defense. I don't know just what matters counsel has to interrogate him about. We can proceed and if we reach some points where you have anything you wish to address the Chair about, you may feel at liberty to do so.

I can't anticipate, I have no idea what his testimony is going to be.

Mr. Travis. I would like to have the understanding with counsel of the committee that the only personal products would be Penn Products and Mercury Oil, as I was told the day before yesterday.

Mr. Kennedy. I didn't tell you that.

Mr. Travis. Mr. Tierney.

Mr. Kennedy. He said he didn't.

[fol. 75] The Chairman. All I can say is that we will go into anything within the jurisdiction of this committee, about which we think the witness may have information,

and can give testimony regarding except where, even though the committee may be interested in it, the matter may be covered by our jurisdiction, and would be clearly within the purview of these hearings, if the witness is under indictment for the offense for which he was indicted, we shall not interrogate him about that.

If he feels that might jeopardize his defense, we recognize that, where he is under indictment he should not be compelled to be a witness against himself on the subject matter involved in the indictment. That rule or policy will be observed.

Proceed with the interrogation and we can rule upon anything that comes up.

Mr. Travis. My problem, if I may interrupt, Senator, again, is that I cannot let my client open the door to testifying as to all personal matters if we don't have an understanding concerning the matters for which he is under indictment and matters relating thereto which may have occurred after the specific events for which he is indicted.

The charge is a conspiracy charge, and the indictment charge is a conspiracy charge, and it is very clear under Indiana criminal law that events which happen after the specific event charged in the indictment might be used by the prosecution to show the origin and continuance of the indictment, to relate it back.

The matters that have been inquired about today in the hearing relate, to my mind, directly to the matters, to the transaction, for which he is indicted.

The Chairman. I have no way of knowing what is going to happen. I don't want to make any commitments or agreements here, other than what I have said. We have done that heretofore, and I made the general statement as a matter of policy of the committee, and I think it is the correct policy of the committee. I don't know what he is going to be asked. You will have to give him such counsel as you feel under obligation to as his attorney.

[fol. 76] Proceed, Mr. Kennedy.

Mr. Kennedy. I can say, Mr. Chairman, I have no intention of going at all into the matters for which Mr. Blair is presently under indictment, namely the road situation out in Indiana.

The Chairman. Is that what he is indicted for, some activity in connection with that?

Mr. Kennedy. With the purchase of property and the sale back to the State for excessive and exorbitant profits. We don't expect to go into that matter.

Mr. Travis. Mr. Chairman, I think it would be helpful if a copy of the indictment were placed in the record. I have one here.

The Chairman. We will not place it in the record. It may be made Exhibit No. 47 for reference.

(Document referred to was marked 'Exhibit No. 47' for reference and may be found in the files of the Select Committee.)

Mr. Tuttle: At this point, I think it should be helpful to both sides, with Your Honor's approval, that the indictment itself be embodied, because it is referred to throughout and it is made an exhibit here in this green book from which Mr. Tierney is reading, but it is not printed therein and yet it is an important part of the record.

I don't want to interrupt Mr. Hitz' train of procedure here, but at some point I think that exhibit ought to be included as part of the testimony of Mr. Blaier at this point.

Mr. Hitz: I don't see the relevancy of it at the moment, Your Honor. I think that may a part of Mr. Tuttle's defense and I think I will postpone any activity on that now.

In other words, I am not offering it.

Mr. Tuttle: Well, here is an exhibit offered.

The witness is interrogated about it on the theory that it has become part of the record and proceedings before the committee, and under the circumstances I respectfully submit that it be part of the record at this point, that it should be recognized in the reading of Mr. Blaier's statement, because otherwise both his statement and the state-[fol. 77] ment of his counsel is—and the references thereto by the Chairman of the committee and Mr. Kennedy—are unintelligible, don't know what he is referring to; whereas, the committee knew what they were referring to because it was presented there.

The Court: What was the ruling of the Chairman that was just made there? I thought they said they would not make it a part of the record but they would enter it or have it accessible in the files?

The Witness: What he means, Your Honor, is that it is not a part of this document.

There are some exhibits which are printed in the document.

The Court: Yes.

The Witness: Now, this is not a part of this document. Nevertheless it is a part of the committee's record as far as these hearings are concerned, and it is an exhibit to these hearings and found in our files. That is the distinction.

Mr. Tuttle: As—

The Court: Well, is it available for this Court to ascertain what it is?

The Witness: Oh, yes, Your Honor. It's a public exhibit.

The Court: It's a public exhibit?

The Witness: Yes, it is, Your Honor.

Mr. Tuttle: That's the point that he was interrogated about. The only omission is that like many other exhibits it was somewhat bulky and they didn't print it in this document, but they said it was a public record and anybody that was interested could see it and of course its content was made the subject of interrogation both of Mr. Blaier and later of Mr. Hutcheson.

So it would seem to me fair that this Court have an opportunity to have cognizance of it.

The Court: Where can it be seen by this Court?

The Witness: I can bring a copy of it here, Your Honor.

The Court: Well, suppose we ask the witness to do that, then.

Mr. Tuttle: I would respectfully ask that inasmuch as it is here as part of the subject matter of the testimony, that [fol. 78] the witness be requested to, and I will accept his copy.

The Court: Can you do that conveniently?

The Witness: I can, Your Honor.

The Court: All right, let's do that, then.

The Witness (Reading):

Mr. Kennedy. You are second general vice president of the Carpenters?

Mr. Blaier. Yes, sir.

Mr. Kennedy. How long have you held that position?

Mr. Blaier. Since 1952, January.

Mr. Kennedy. You were appointed at that time?

Mr. Blaier. At that time I was appointed.

Mr. Kennedy. And subsequently you were elected at a convention in November 1954?

Mr. Blaier. That is right, sir.

Mr. Kennedy. Did you have any opposition at that time?

Mr. Blaier. I had no opposition.

Mr. Kennedy. What position did you hold prior to the time you became second vice president?

Mr. Blaier. I was a member of the general executive board, representing the second district.

Mr. Kennedy. Were you appointed to that position?

Mr. Blaier. In 1948 I was appointed to succeed William K. Kelly and elected in the 1950 convention by acclamation.

Mr. Kennedy. You had no opposition?

Mr. Blaier. No, sir.

Mr. Kennedy. What does the second district cover, what areas?

Mr. Blaier. New Jersey, Pennsylvania, Delaware, Maryland, West Virginia, and the District of Columbia.

Mr. Kennedy. When did you first meet Mr. Max Rad-dock?

Mr. Travis. At this point, Mr. Kennedy and Mr. Chairman, I would like it understood distinctly that the question may be answered on the condition that it will not relate to anything transpiring in Lake County, Ind. There is [fol. 79] no question that the witness has known Mr. Rad-dock for many years, but in view of the line of questioning that has gone on today, the questions could lead to a direct inquiry into the matters for which Mr. Blaier is under indictment.

The Chairman. The Chair will sustain that to the extent of the indictment, the matters covered in the indictment: I will not sustain it beyond that.

Mr. Travis. Matters occurring after the event?

The Chairman. If they are unrelated to the things contained in the indictment, yes. A man could be indicted up there, or could be under indictment, for one offense, and might subsequently commit another, or commit some impropriety or violation of trust, as we are often inquiring into here, and still would have no relation to the subject matter contained in the indictment.

Therefore, I couldn't excuse a witness from testifying about other things.

Mr. Kennedy. Mr. Chairman, Mr. Raddock, as I understand it, is not under indictment in the conspiracy with Mr. Blaier, at least as of this time.

Mr. Travis. This witness is under indictment, Mr. Kennedy, and his rights must be protected and preserved.

Mr. Kennedy. This is a question on the relationship with Mr. Raddock, and as I understand it Mr. Raddock is not under indictment at the present time in connection with a conspiracy with Mr. Blaier.

Mr. Travis. I have no knowledge about Mr. Raddock.

Mr. Kennedy. We are just asking about Mr. Raddock. I am sure he can answer those questions.

Mr. Travis. If the inquiry will relate to transactions in Lake County, Ind., the witness will be advised by me that he cannot answer the questions, because he is charged with conspiracy under indictment, and anything with regard to that, restitution or otherwise, is directly related, and could be used by the prosecution, possibly, against him.

The Chairman. Proceed with the questions.

[fol. 80] Counsel can represent his client as he wishes to.

Mr. Kennedy. How long have you known Mr. Raddock?

Mr. Blaier. On the advice of counsel, I refuse to answer the question, Mr. Chairman, and Mr. Kennedy, on the grounds that it relates solely to a personal matter not pertinent to any activity which this committee is authorized to investigate, and also because it might aid the prosecution in the case in which I am under indictment."

Mr. Hits: That will be enough, Mr. Tierney.

Your Honor, may the record show we are finishing this particular reading on page 12062 of Mr. Blaier's testimony.

It then proceeds immediately to an inquiry concerning a book about Mr. Hutcheson, Sr. We will not offer that in evidence here although our position has not changed with respect to the book testimony.

However, since Mr. Hutcheson later on in his own testimony, at greater length and in greater detail on the same subject which we do feel admissible and important to the case, we will forego putting that into the record here through Mr. Blaier's testimony, and will urge it upon Your Honor at the time Mr. Hutcheson's testimony goes in.

So, with that, we will conclude, or we will pass on to page 12072 which is still Mr. Blaier's testimony, and I would like Mr. Tierney, then, to read a little below the middle, where it says—

The Court: How much more of it is there in that?

Mr. Hitz: Approximately a little bit more than two pages more of Mr. Blaier.

The Court: Well, he might get two pages in, but just about that. We will then have to quit.

Mr. Hitz: Yes, Your Honor.

Just below the middle of 12072.

The Witness (Reading):

"Mr. Kennedy. Did you ever make any arrangements for Mr. Max Raddock to fix any case for you in Indiana?

Mr. Blaier. No, sir.

Mr. Travis. May the witness withdraw that answer, please?

[fol. 81] Mr. Kennedy. Excuse me?

Mr. Blaier. That was a fast switch. On the advice of counsel I refuse to answer the question on the ground that it relates solely to a personal matter not pertinent to any activity which this committee is authorized to investigate, and also because it might aid the prosecution in the case in which I am under indictment.

Mr. Kennedy. Did Mr. Raddock have anything to do with this matter in Indiana in connection with your not being indicted in Lake County?

Mr. Blaier. Mr. Kennedy, on the advice of counsel, I refuse to answer the question on the ground that it relates solely to a personal matter not pertinent to any activity which this committee is authorized to investigate, and also

because it might aid the prosecution in a case in which I am under indictment.

Mr. Kennedy. Mr. Blaier was in the hotel in Chicago at the same time as Mr. Raddock, according to the records.

The Chairman. I believe the testimony before the committee is that you were at the hotel, the Drake Hotel, in Chicago, on August 17, at the same time that Mr. Raddock was there, about which he was interrogated this morning.

Would you want to give us any information about that?

Mr. Blaier. Senator McClellan, no.

The Chairman. That would come within the purview of your previous statement as to why you do not want to testify?

Mr. Blaier. Yes, sir.

The Chairman. We have here what purports to be the original hotel account of your stay there at that time. If you say it relates to the matter about which you are under indictment, of course, I will not insist, then, that you answer the question.

Mr. Travis. Mr. McClellan, I believe it does, Senator, and I will have to instruct the witness not to answer.

Mr. Kennedy. Mr. Chairman, so we understand, this has nothing to do—

The Chairman. I thought this related to the matter of the indictment.

[fol. 82] Mr. Kennedy. No. Their indictment concerns certain transactions that they had with the State of Indiana in connection with certain property, the purchase of the property, then, and then the reselling of the property back to the State.

This has to do with the activities of Mr. Raddock, Mr. Charlie Johnson, which also has nothing to do with the indictment, Mr. Hoffa, Mr. Sawochka, and other individuals, Mr. Holovachka, in connection with attempts, through improper means, to keep them from being indicted in Lake County, Ind., and it has nothing to do with the merits of the indictment, per se.

This is when they were up in Chicago.

The Chairman. They are not indicted for attempts to obstruct justice?

Mr. Kennedy. That is correct.

The Chairman. They are indicted for offenses with respect to a conspiracy to defraud the State of Indiana, is that correct?

Mr. Kennedy. That is correct.

The Chairman. I have not looked at the indictment. Is that a fair statement?

Mr. Travis. No, sir. The indictment is in two counts. One is a conspiracy to commit a felony, to wit, bribery of a State official. I wish to say at this time that it is my responsibility as attorney for this gentleman in the case under which he is under indictment, to advise him whether or not I think the questions which Mr. Kennedy is asking and is going to ask with regard to Lake County could be used in that prosecution, and my responsibility will be carried out by advising the witness to answer no questions.

The Chairman. The Chair finds that the indictment is an indictment for conspiracy to commit a felony, to wit, bribery of State officers, and the actual bribery of State officers. Those are the two charges.

If this transaction in Chicago relates to that indictment, I will not order the witness to answer the question.

Mr. Kennedy. It does not relate to the indictment. It re-[fol. 83] lates to steps taken in a later conspiracy to present an indictment in Lake County, Ind. It has nothing to do, once again, with the facts surrounding the purchase and reselling of the lands. This involves entirely different individuals. Max Raddock is not under this indictment, nor is Mr. Charles Johnson, Mr. Holovachka, Mr. Sawochka or Mr. Hoffa.

I can understand that the witness will not want to answer the questions on the grounds it may tend to incriminate him, but not because he is under indictment or that I am asking questions dealing with the indictment, because I would not do that.

The Chairman. I will go this far with it. I will present you the hotel bill and ask you to examine it and state if you identify it.

Mr. Travis. With all due respect to you, Mr. Kennedy, as an able lawyer, I disagree with what you have said.

The Chairman. It may be a borderline case. I am unable to determine it at this time. The witness can exercise his privilege.

(The document was handed to the witness.)

(The witness conferred with his counsel.)

Mr. Travis. Is there a question before the witness at this time?

The Chairman. There is the question of the bill at the Drake Hotel, at the time the Chair referred to. I believe it to be August 17, 1957. I presented it to the witness and asked him to examine it and state if he identifies it. That is in the nature of a question.

Do you identify it?

Mr. Blaier. Senator McClellan, on the advice of counsel, I refuse to answer the question on the ground that it relates solely to a personal matter, not pertinent to any activity which this committee is authorized to investigate and also because it might aid the prosecution in the case in which I am under indictment.

The Chairman. The Chair finds that the indictment is for alleged actions in 1956 that the crimes charged under the indictment took place.

This is something like a year later. If you want to exercise your privilege, that is all right. But I do not know how this could be related to an offense that was committed a year earlier. It could be by indirection, but certainly not [fol. 84] directly, if the indictment is anywhere near accurate.

Mr. Travis. Indirection, Mr. Chairman, can be just as harmful as a direct matter.

The Chairman. This hotel bill may be marked 'Exhibit No. 49' for reference, and may be found in the files of the select committee.

Mr. Hitz: That will be all, Mr. Tierney.

That concludes the reading from Mr. Blaier's testimony. This may be a good time to quit.

The Court: I think we will have to quit now on account of the time, until ten o'clock tomorrow morning.

(Thereupon, at 3:30 o'clock p.m., the Court adjourned until 10:00 o'clock a.m., tomorrow, Wednesday, April 6, 1960.)

April 6, 1960

The Court: All right, gentlemen.

Thereupon PAUL J. TIERNEY the witness at adjournment, resumed the stand, and was further examined and testified as follows:

Mr. Tuttle: Might I, with Your Honor's permission, inquire whether Mr. Tierney has the indictment with him that he said yesterday he would bring with him?

The Witness: Yes. Mr. Hitz has it.

Mr. Hitz: Here it is, Mr. Tuttle.

Mr. Tuttle: Before we leave the testimony of Mr. Blaier, I think it might be completed by taking in, as the committee did, Exhibit 47, which was referred to by the committee, as they described its contents in part, and of course it was the subject of discussion between Mr. Travis and Mr. Kennedy, of counsel, and I would suggest, therefore, that it be part of the testimony of Mr. Blaier just as it was in fact, and under the designation of Exhibit No. 47.

[fol. 85] The only reason it isn't in the printed book is that many of the exhibits the committee said are too bulky to be printed and we will refer to them, or anybody else who wishes to refer to them, and find them in the records of the committee which are public records, as Mr. Tierney said yesterday.

The Court: Is there any objection to that, Mr. Hitz?

Mr. Hitz: No, we don't object to it and I think I can well adopt the views expressed by Mr. Tuttle with respect to the testimony that I am now going to offer, after this has been straightened out, of Mr. Hutcheson.

I feel that all of Mr. Hutcheson's testimony should go into this trial and I think that I could express it as well as Mr. Tuttle has, the fact that we want not only context but we want continuity and chronology here.

Mr. Tuttle: And I appreciate the compliment; I thank Mr. Hitz for it. If I have thrown away all the objections I

may have to make in the course of the testimony he is about to put in, I shall have to exercise the privilege of changing my mind when the time comes. But I don't think I have.

The Court: All right, we will see about that as we go along.

In the meantime, we will let that indictment be noted as being filed as an exhibit such as you suggest.

Mr. Tuttle: Thank you, Your Honor.

Mr. Hitz: Perhaps it may as well retain its number that was given to it by the committee, rather than to become a government exhibit.

The Court: It seems to me that that might be a good thing to do.

What number would that be?

Mr. Tuttle: 47, Your Honor.

The Court: Government's Exhibit No. 47.

Mr. Hitz: It would be the committee Exhibit 47, I believe, Your Honor.

The Court: Yes, Committee Exhibit No. 47.

(Thereupon, indictment from Marion County, Indiana, marked Senate Select Committee Exhibit No. 47 for identification, was marked Government Exhibit No. 47 for identification and received in evidence.)

[fol. 86] Direct examination.

By Mr. Hitz:

Q. Now, Mr. Tierney, would you turn to page 12079, please, of the Part 31, and would you be good enough to read that page down through the call to order?

A. (Reading:)

**"INVESTIGATION OF IMPROPER ACTIVITIES IN THE
LABOR OR MANAGEMENT FIELD.**

Friday, June 27, 1958

United States Senate

**Select Committee on Improper Activities
in the Labor or Management Field, Wash-
ington, D. C.**

Q The select committee met at 10 a.m., pursuant to Senate Resolution 221, agreed to January 29, 1958, in the caucus

room Senate Office Building, Senator John L. McClellan (chairman of the select committee) presiding.

Present: Senator John L. McClellan, Democrat, of Arkansas; Senator Sam Ervin, Jr., Democrat, of North Carolina; Senator Carl T. Curtis, Republican, of Nebraska.

Also present: Robert F. Kennedy, chief counsel; Paul J. Tierney, assistant counsel; John J. McGovern, assistant counsel; Harold Ranstad, investigator, Charles E. Wolfe, accountant, GAO; Karl Deibel, accountant, GAO; John Prinos, accountant, GAO; Richard G. Sinclair, accountant, GAO; Ruth Young Watt, chief clerk.

The Chairman. The committee will come to order."

Mr. Hitz: Thank you.

Now, a few questions of a technical sort, Mr. Tierney:

By Mr. Hitz:

Q. Did the McClellan Select Labor Committee, so-called, meet as indicated on the page 12078 which you have just read? Did it in fact occur?

A. It did.

Q. Is that caucus room in the District of Columbia?

A. It is.

Q. Did the committee at that time have a rule adopted pursuant to former Senate Resolution 180 to the effect that a quorum for the purpose of taking testimony of two or more was sufficient?

A. That's correct.

[fol. 87] Mr. Tuttle: For accuracy's sake I believe the proviso was that there were only two or more there should be a representative of each of the Parties.

The Witness: That's correct, yes, sir.

Mr. Hitz: I think that's correct.

The Court: Well, there was such representatives, weren't there?

Mr. Tuttle: Yes, sir.

The Court: All right.

Mr. Tuttle: I don't question the accuracy of this record here, at all.

The Court: All right.

Mr. Tuttle: But if we put the rule in the record I thought we ought to have the completeness of it.

Mr. Hitz: Thank you, sir.

By Mr. Hitz:

Q. Now, will you turn to page 12087?

A. Yes, sir.

Q. And before I ask you to read on that page, Mr. Tierney, so I will not have to interrupt you, I wonder if you would look at the large print a little above the middle, and you will note that it says "Testimony of Maurice A. Hutcheson, accompanied by Howard Travis, counsel—Resumed."

I would like to ask you, had Mr. Hutcheson testified prior to this?

A. No, he had not.

Q. And is the "resumed" a mistake in print here?

A. It's an error.

Q. Now, will you go towards the top where the Chairman said, "Call the next witness," and read, without omission, until I ask you to stop, please, sir?

A. (Reading:)

"Mr. Kennedy. Mr. Hutcheson.

The Chairman. Be sworn, please, sir. You do solemnly swear the evidence you shall give before this Senate select committee shall be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. Hutcheson. I do.

[fol. 88] TESTIMONY OF MAURICE A. HUTCHESON,
ACCOMPANIED BY HOWARD TRAVIS, COUNSEL

The Chairman. State your name, your place of residence, and your business or occupation.

Mr. Hutcheson. M. A. Hutcheson, general president, United Brotherhood of Carpenters and Joiners of America, Indianapolis, Ind.

The Chairman. Thank you very much. Mr. Hutcheson, you have counsel with you. Counsel, identify yourself for the record, please.

Mr. Travis. My name is Howard Travis, Indianapolis, Ind. I have offices at 1011 Fletcher Trust Building. Mr.

Chairman, the witness has informed me that the bright spotlight is distracting to him, and I would like to request that it be turned off.

The Chairman. Well, we will turn them off if the witness cooperates with us, and I assume he is going to cooperate with the committee. For the present, you may turn off the lights.

Mr. Travis. Thank you, Mr. Chairman.

The Chairman. Proceed, Mr. Kennedy.

Mr. Travis. I should like—

The Chairman. The purpose, of course, of granting such a request is that the witness is endeavoring to testify and to testify accurately and truthfully, and that if the lights are a detraction it might interfere with his concentration it is only proper that they be turned off.

I have taken the position, and the committee has sustained me, that it does not take a great deal of concentration simply to read a statement that 'If I told the truth, it might tend to incriminate me.' We would like to defer to every reasonable request and grant it.

But we must reserve the right to determine what is reasonable and what is not, under the circumstances.

Mr. Travis. I want to assure the committee that Mr. Hutcheson will not resort to the guaranties of the fifth amendment, and I would like to correct an impression that was apparently gained by the newspapers yesterday as to Mr. Blaier.

It was not Mr. Blaier's intention in his refusal, as I [fol. 89] draft it, to rely on the fifth amendment. I feel that there are other guaranties that a man under indictment has, including the due-process-of-law clause, that he must be tried only before the court where the indictment is pending.

I would like to repeat for the record this morning, that it is a well-known fact that this witness was, together with others, indicted on February 18, 1958, by the grand jury of Marion County, Ind., and such indictment is now pending in Marion County criminal court, division No. 1, cause No. CR 19429Y, and such indictment has not yet been tried.

The indictment is on two counts.

The Chairman. Mr. Counsel, is that the same indictment that was presented yesterday?

Mr. Travis. Yes, Mr. Chairman. That is the indictment which has been tendered to the committee.

The Chairman. We will keep that in mind.

(At this point, Senator Curtis entered the hearing room.)

Mr. Travis. The indictment refers to transactions occurring in connection with the sale of lands to the State of Indiana, for the construction of the so-called tri-State expressway in Lake County, in the vicinity of Gary.

It is also well known that, in connection with that alleged transaction certain moneys were paid to the State of Indiana prior to the return of the indictment. The alleged transactions are purely personal. I submit, therefore, that any inquiry by this committee into or about any of the facts related to or which might be related to such indictment and the transactions recited therein, however remote the same may be, and whether occurring before or after the transaction recited in the indictment, or as to any matter which might be attempted to be used in furtherance of the prosecution thereof, would be improper, without appropriate pertinency and outside the scope of the investigation which this committee is authorized to make.

It would violate and impair this witness' rights as an American citizen and would be contrary—excuse me, Mr. Chairman, I feel ill.

[fol. 90] May I have a recess, Mr. Chairman?

The Chairman. Yes.

The Court: Who was asking for a recess at the time?

The Witness: Mr. Travis. He was stricken ill at the time.

Mr. Hitz: All right, may I interrupt you a minute?

Turn now to 12104, Mr. Tierney, and before reading I would like to ask you a couple of questions:

By Mr. Hitz:

Q. The testimony of Mr. Hutcheson was not undertaken by the committee after Mr. Travis stated that he was ill, until this second page that I have asked you to turn to, which is 12104. Isn't that true?

A. That's true.

Q. In other words, we are not omitting any of Mr. Hutcheson's testimony on the return page 12104?

A. That's correct.

Q. And at that time he appeared with an additional lawyer, did he not, as the record will show?

A. That's correct.

Q. Did he at that time also have the advice, services and presence of Mr. Tuttle in the committee room?

Mr. Tuttle: No. I can say he did not.

Mr. Hitz: All right, sir.

Would you please, Mr. Tierney, read on page 12104 the testimony of Mr. Hutcheson?

The Witness: (Reading):

"TESTIMONY OF MAURICE A. HUTCHESON, ACCOMPANIED BY ATTORNEYS HOWARD TRAVIS AND F. JOSEPH DONOHUE—
Resumed.

The Chairman. Let the record show that Mr. Donohue also appears as counsel for Mr. Hutcheson, with Mr. Travis.

Mr. Travis. May Mr. Donohue finish reading my preliminary statement, please?

The Chairman. Well, let's move along, or you can put it into the record. We are going to proceed as we did yesterday.

Mr. Donohue. It is not very long, Senator.

The Chairman. Proceed.

[fol. 91] Mr. Donohue. I respectfully submit that this committee should not undertake to elicit from this witness, and is without authority to attempt to elicit from this witness, any matters related or which might be related to such personal transactions, or which could be used or might be attempted to be used as evidence or as a means of obtaining evidence in aid of the prosecution of such indictment.

For these reasons, I respectfully request the chairman to rule that interrogations of such character are not pertinent, and are outside the scope of proper inquiry. If such ruling is not made, then I must respectfully protest the making of any such interrogation, and shall feel bound

to advise the witness to refuse to answer on the grounds which I have stated.

Inasmuch as I cannot foresee the interrogations which may be made, I also respectfully request that, if any interrogations are not intended to relate to the matters which I have stated, I, or the witness, be assured of that fact in order that the witness may not be put unwillingly in the position of waiving any right by reason of being unaware and unadvised of the topic of inquiry, and the connective reasoning whereby the precise questions asked related to it.

The Chairman. All right. We will proceed as we did on yesterday, when Mr. Blaier was on the stand. If there is any issue raised by counsel with respect to the jurisdiction of the committee or the propriety of the question, we will rule on them as we go along.

Proceed.

Mr. Kennedy. Mr. Hutcheson; you have been general president of the Brotherhood of Carpenters for how long?

Mr. Hutcheson. January 1, 1952.

Mr. Kennedy. Were you elected at that time?

Mr. Hutcheson. I was first vice president at that time, and, when the former general president resigned and became emeritus, I automatically became general president under the constitution of our organization.

Mr. Kennedy. How had you become first vice president?

Mr. Hutcheson. I was appointed in 1938.

[fol. 92] Mr. Kennedy. By whom?

Mr. Hutcheson. By the general president.

Mr. Kennedy. Who was the general president?

Mr. Hutcheson. William L. Hutcheson.

The Chairman. That was your father?

Mr. Hutcheson. Yes, sir.

Mr. Travis. Could I have the lights turned off again, Senator McClellan?

The Chairman. Yes. Does your constitution provide that the president of your union may, in effect, appoint his successor?

Mr. Hutcheson. When there are vacancies, the general president appoints, subject to the approval of the general executive board.

The Chairman. So, instead of there being an election for general president, it can, and has been, in effect, handed down from father to son?

Mr. Hutcheson. No, sir; that is not correct. The constitution is very clear on how the officers shall be elected and the vacancies filled.

The Chairman. Does it so provide? I mean, it can so operate and did so operate, I believe, in this instance, but you say with the approval of the executive board. It did so operate in this instance that the presidency was, in effect, handed down from father to son.

Mr. Hutcheson. Sir, I did not become president until 1952, and I became general president automatically through the constitution provisions of the first general vice president.

The Chairman. Mr. Hutcheson, that is what I am trying to establish here. One of the primary purposes of these investigations is to determine what the situation is in management-labor relations and, also, with respect to the internal affairs of unions, with a view of considering legislation that might be needed to correct some conditions, some things that we might regard as improper practices.

It has intrigued me that a man can become president of a great organization like this simply by having been designated as such by the general president. Just forget the relationship for the moment between you and your father. But assume he had designated John Doe in the way he [fol. 93] designated his son, and, upon his passing away, you automatically became president. What I wanted to point out was that the membership, the dues-paying members, under your constitution had no opportunity to vote upon you as first vice president, or whatever you were appointed to, did they?

Mr. Hutcheson. I beg your pardon, Senator. I was appointed in 1938, and I got elected in 1940, and again in 1946, and in 1950, and I was elected general president in 1954.

The Chairman. Then you have been elected?

Mr. Hutcheson. Yes, sir.

The Chairman. I didn't quite understand. That is why I wanted to get it clear. We are interested, of course, in democratic processes in the election of officials of unions.

I got the impression from what you said, and that is why I wanted to clear it up, that the office just in effect had been handed to you.

Proceed, Mr. Kennedy.

Mr. Kennedy. You say you were elected in 1938. Did you have opposition in 1938?

Mr. Hutcheson. In 1940.

Mr. Kennedy. Did you have opposition in 1940?

Mr. Hutcheson. No, I did not have.

Mr. Kennedy. When were you elected the next time?

Mr. Hutcheson. 1946.

Mr. Kennedy. Did you have opposition? 1946?

Mr. Hutcheson. Yes, sir, I had opposition in 1946.

Mr. Kennedy. Who was the opposition?

Mr. Hutcheson. From Oklahoma City. Meyers, I believe his name was.

Mr. Kennedy. When was the next time you were elected?

Mr. Hutcheson. 1950.

Mr. Kennedy. Did you have opposition then?

Mr. Hutcheson. No, sir.

Mr. Kennedy. Then you were elected general president in 1954?

[fol. 94] Mr. Hutcheson. 1954.

Mr. Kennedy. Did you have opposition then?

Mr. Hutcheson. No, sir.

Mr. Kennedy. How long have you known Mr. Max Rad-dock?

Mr. Travis. At this point, Mr. Counsel, is your line of questioning going to be as it was yesterday, relating to the book rather than the Lake County transactions?

Mr. Kennedy. Mr. Raddock is not under indictment in any conspiracy with Mr. Hutcheson. I am just going to ask Mr. Hutcheson about his relationship with Mr. Rad-dock.

The Chairman. Let the Chair say this: I have gone into the matter a little to ascertain where the line of questioning may go. He will be interrogated regarding the book. He will also be interrogated regarding the use of union funds in a project which, on the face of it at least, appears to have the objective which was to obstruct justice.

So he will be interrogated about those things. As to any act covered in the indictment for the period of which the crime is alleged in the indictment, he will not be interrogated. But the matters that he will be interrogated about are subsequent to the time that the offense in the indictment was charged.

All right.

Mr. Kennedy. How long have you known Max Raddock?
The Chairman. And it is not something for which he is now under indictment.

Mr. Hutcheson. I don't know the exact number of years, but I have known him for some time.

Mr. Kennedy. Can you explain to the committee why you paid him the extra \$50,000, which ultimately amounted to \$250,000, without him producing any books on the book that he was writing and producing on your father?"

Mr. Tuttle: May I have the privilege of making an objection to the further reading about the book. We have spoken of this before, and the questioning on the subject of the book goes on for quite a number of pages here.

[fol. 95] I would like to state that as to this book, Your Honor, there is no dispute about this, that at the convention of 1954 where there were some 2,000 delegates, there was a resolution adopted that, in view of the fact that William L. Hutcheson, who had been their president for decades, had very recently died, and in view of the fact that the history of the United Brotherhood of Carpenters from its small beginnings had paralleled the rise of the labor movement through the years, and therefore the history of the United States, that there should be a book compiled which would be the life of William L. Hutcheson in the setting of the history of the Brotherhood itself, and it was further thought that that book would be extremely desirable as a monument to the Brotherhood in connection with its 75th Anniversary celebration which was about to come along, I think, in the succeeding year, if I remember, and which would involve a celebration all over the United States and Canada, centralized in Washington.

Now, the resolution of a convention directed the Executive Board to proceed with the project of having that book produced and containing the contents which have been de-

scribed. There was a book produced of over 500 pages with many illustrations, pictures, and so forth.

Now, then, their interrogation concerning this book was fully answered at all points by Mr. Hutcheson so far as he had any personal knowledge about it, but the committee pursued the subject on the theory that the book cost the Brotherhood too much and there was a chart displayed and reproduced in the press of the United States to show how and when there were paid in connection with the book some \$310,000.

There were some 368,000 copies produced.

It was questioned whether the original contract when the thing was in embryo had been performed by the publishers. The man with whom the contract was made was Mr. Raddock who had several publishing concerns which had to do with the publishing work of this book. He also undertook to have the research work done, to bring together the 75 years of the history of the Brotherhood, and the life of William M. Hutcheson, from a time prior to his birth, and the story of his ancestors in Scandinavia, and it took an immense amount of time.

[fol. 96] The book was not ready on the time mentioned in the contract, the original contract, because at that time it was in embryo.

Well, I am not going into the merits of the discussion at all, because that is the very thing that I think has no place here. Your Honor is not here, of course, to try the story of the book, whether too much was paid or not enough was paid or whether it was produced at the contractual moments it was to be produced or not, or what the ultimate distribution of the book was throughout the United States and Canada.

We are here to try just one simple thing, and that is 18 questions which were put to Mr. Hutcheson which he did not answer for the reasons that the record will make plain, and not one of which has anything to do with this book at all.

There is no dispute that as far as the book was concerned he answered all the questions that were put to him to the best of his ability.

Now, then, of course it will be said by Mr. Hitz that the funds that were dedicated for the payment of this book by the general convention were union funds, and that therefore the committee had jurisdiction to inquire as to whether the union funds were used providently in connection with the book.

I can't see how that adds anything to the question that is before Your Honor.

These questions that are in this indictment and before Your Honor do refer to union funds and the use of union funds, but in an entirely different connection—not the book at all.

If union funds are a proper subject for the investigation by the committee, then so far as these questions are concerned the questions themselves and the context in which they are decide the question. That is the circumference of the question so far as this indictment is concerned.

I will submit respectfully that if we are to consider every possible question that was made about us of union funds for the book, the use of union funds in connection with the 75th Anniversary, and several other questions that were perfectly extraneous to this indictment but which involved the use of union funds and union property, why, [fol. 97] we are going into the remotest distances from anything that is relevant and they can be extremely prejudicial, because there we are not raising an issue as to whether these questions were properly and justifiably and without criminality refused answers for the reasons that appear in the record, but we will be going into something else unconsciously. Unconsciously we will be considering whether or not the union was run with that kind of accuracy and supervision and oversight and administrative skill and accountability of responsibility that some of our large executive corporations of economic note are run.

These people are carpenters. They have all started as carpenters; and so that I can understand the desire and I will point to the portions of the record when it comes time, that even in connection with the questions of the indictment there was an intention on the part of this committee to present a picture extremely unfavorable to Mr. Hutcheson and the other general officers of the company, not only

as to this matter of the indictment, subjects related to it, but the whole operation.

Now, I do not feel that we should bring into this record matters that are so completely irrelevant to the precise issue. I hope that we can keep this within the bounds of the question presented by this indictment without the—I would say without the prejudicial consequences of endeavoring, possibly, to blacken the witness—if not from the point of view of morals, at least from the point of view of administrative ability.

I can't conceive that those things are in issue here. The question, the simple question, and the only question, and I am prepared to discuss that at the proper time, is whether or not when the committee said, "We will now interrogate you, Mr. Hutcheson, about what was done to prevent an indictment against you," and we will do that because the doings that we have in mind were after the date when the indictment, to wit, May 1, 1956, this conspiracy was supposed to start.

I have already respectfully called to Your Honor's attention and you will see it on the face of this indictment, that this is a continuing conspiracy.

The date of May 1, which apparently was fastened on [fol. 98] by the Chairman on the advice of his counsel, Mr. Kennedy, was only the beginning of the conspiracy. There is no termination in it. And when the Chairman said that "What we are asking you about is unrelated because it was a year later from May 1st," Your Honor has in mind that the dates were July and April, 1957, which, of course, is a year later than the date inscribed in the indictment for the beginning of the conspiracy: "that therefore, when we ask you about that"—even the restitution of the profits referred to in the indictment—"it is wholly unrelated."

Now, that will be the issue for discussion, and I believe with its various facets will be the question before Your Honor for decision.

But to return to the book, I cannot conceive what possible relevancy to the subject matter which Your Honor will ultimately have to approach for the decision as to whether or not we are guilty or to be acquitted in this connection.

We are building up a record of immense size on a subject that I say is not only remote but so remote that it is over the horizon, and I respectfully urge, therefore, that we should not undertake to read that portion of the testimony of Mr. Hutcheson where he was examined at great length concerning the story of this book.

Mr. Hitz: I would like to state very briefly our position, because then I will be able to suggest to Your Honor a practical solution to this so that we may save some time, which this side of the case is interested in doing.

I may say at the outset that there are only seven pages involved. They could have been read twice over in the last few minutes.

The reason why we think that it is pertinent and helpful to the Court to have this material in is that it shows the original background connection between Mr. Raddock and Mr. Hutcheson and the Carpenters and the Carpenters' funds.

In the particular and more narrow subject which is embraced within the subject of inquiry of this indictment, which is the apparent effort by Mr. Hutcheson and those associated with him in the indictment or in the affair that led to the indictment, and those who acted on behalf of [fol. 99] Mr. Hutcheson and those other suspects to see that they were not indicted and brought to justice out in Indiana, those efforts were, according to the facts that were at the hands of the committee and which have never been cast light upon, those efforts were masterminded by Mr. Raddock, a resident of Merrimac, New York, a publisher and editor with his place of business nearby.

Mr. Raddock goes out to Chicago where he engages a room which was ultimately paid for by the Carpenters, at a time in the very midst of the several weeks of consideration that was being given by the Lake County grand jury and by its prosecutor, Mr. Sawochka, to whether or not there should be an indictment brought within that county.

Mr. Raddock, the skeleton of facts—and that is all the committee ever got—was masterminding this procedure and this effort to see that an indictment was not brought, and it wasn't brought in that county.

In the course of doing so the facts strongly indicate that Mr. Raddock is the one who obtained contact with Mr.

Sawochka, who was head of Local 142 of, not the Carpenters, but the Teamsters, who ultimately made this fake purchase of real estate interest of which we have already heard about, which could have no purpose other than—because the benefits and the fruits of it went to Mr. Sawochka, the prosecutor—could have no other purpose than to benefit the Carpenters' officers, including Mr. Hutcheson, who was under indictment.

So we say that there is considerable relevancy to this particular part of Mr. Hutcheson's testimony, bearing upon the pertinency of the inquiry; both the actual pertinency of it and Mr. Hutcheson's awareness of that pertinency, a second element necessary for the Government to prove.

In addition to that it will have a very important bearing, although not crucial because we have enough without it—but it will have an important role of assistance to Your Honor in determining the important question that is going to be raised by Mr. Tuttle as to whether or not there was legislative purpose to this inquiry, or did it have a purpose solely extraneous to a legislative purpose.

And if we show you, as we will be able to do so by bringing [fol. 100] in this background material of the connection between Mr. Raddock and Mr. Hutcheson and the Carpenters and the Carpenters' funds, we can show you that this was an important segment of the investigation into the activities of Mr. Raddock, which were across the border in the field of labor, and that this was an activity that was well within the scope of the committee's powers.

That can best be shown, if we are able to show the connection in which Mr. Raddock first introduced himself to Mr. Hutcheson's activities, to that union, and to those union funds.

I intended merely to state our position and not to urge it or argue it.

I have a practical solution so I don't have to go into further facts and to make an offer of proof.

I would like to suggest to the Court that since we are only concerned here with seven pages, since it is in a different posture from the testimony of other people which was contained in the volume when I offered the entire volume the other day, since it is the testimony of Mr.

Hutcheson leading up to the very things which the indictment questions, that Your Honor hear these seven pages and if Mr. Tuttle feels he should urge again—perhaps he won't after they are read in context—urge again that they are inadmissible and should not be considered by the Court, he may then make a motion to strike, which I am sure Your Honor will give full attention to and decide upon the merits at that time.

I think we should adopt that procedure.

The Court: There is one question I want to ask you in that connection, and that is, what do you think will be brought out in the reading which might reasonably affect my judgment on accepting this testimony now that would not be acceptable without the reading of that testimony?

What is there that you think would meet some of his arguments as to the relevancy of that testimony, then, that does not appear yet?

Mr. Hitz: Well, to answer that question fully would require some bit of time and I would have to go into the entire matter—

The Court: I don't want you to do that. I want you to give me very briefly the reason.

[fol. 101] Mr. Hitz: Well, it would show that Mr. Raddock was hired in 1954 to write and to publish and to deliver and distribute this book.

The Court: Well, there is no dispute about that.

Mr. Hitz: Well, I haven't finished my presentation.

The Court: Yes, I know you haven't.

Mr. Hitz: And that although at an initial price of \$25,000.00, at various stages of this enterprise monies were given out of the treasury of the Carpenters Union by Mr. Hutcheson to this person, Mr. Raddock, who shortly thereafter became a close friend of him to the full tune of \$310,000.00.

As you can see, I am getting into the merits of the offer and I would like again to suggest that the matter could be wiped clean from not only your mind but the record if we allowed Mr. Tierney to read this, subject to a motion to expunge it from the record at a later time.

The Court: Well, I have got right much confidence in your judgment and if you do think that the materials

brought out will have a bearing on what my decision will be, I will follow your thought.

Mr. Hitz: Indeed, I do.

The Court: And, candidly, expunge it if I still adhere to the thought that Mr. Tuttle is correct in saying it has no place here.

Mr. Hitz: Indeed, I do feel that. I am confident that you will—

The Court: I don't think the reading of seven pages is going to swamp us any more than we have been swamped.

Mr. Tuttle: May I address myself to the suggestion just made?

The Court: Yes.

Mr. Tuttle: Preliminarily to addressing myself to that, let me say this, and I think that Mr. Hitz cannot appropriately represent this book as Mr. Hutcheson's responsibility or origination. It was the act of the convention representing the entire Brotherhood, and then it was put in the hands of the Executive Committee, and whatever was paid was paid pursuant to the authority of the convention and the Brotherhood.

I just want to clear that up because his effort is to show that Mr. Hutcheson was undertaking to pay out all these funds for the book. I, of course, claim that even if that [fol. 102] were the case, there is no connection with what we have here at issue.

Now, one other thought, and I will address myself directly to it because Mr. Hitz is undertaking to say that Mr. Raddock—and I think this comes directly to Your Honor's question—that Mr. Raddock masterminded—

The Court: Yes, he did say that.

Mr. Tuttle: —this situation out in Lake County, after May 1, 1956, and before there was any indictment at all anywhere.

Now, I am quite sure that if Your Honor got the impression that I know you did, that all this interrogation of Mr. Raddock, Mr. Sawochka, and Mr. Sullivan yesterday, and the telegram of Holovachka, the prosecutor, the interrogation of Mr. Johnson and the interrogation of Mr. Blaier, it reveals completely that the theory of the committee was that Mr. Raddock was masterminding it. It all,

every question, in one way or another, related to something that by way of a contact with Mr. Raddock or a contact by Mr. Raddock.

So that the theory of masterminding is not to be related at all to his portion of the production of this book.

There is nothing about masterminding anything except the publication of the book, and only to the extent that he was the responsible compiler and researcher for the material, and his company was the printer.

The masterminding for the book was done by the general convention and by the General Executive Board which is a Board of Directors of the United Brotherhood of Carpenters.

So that I think Your Honor's question was a very searching one. Why haven't we got all the masterminding? So far as the only situation that is involved here at all, and that is the Lake County situation, which we could possibly get through the extensive reading of the testimony that has gone into this record already, and which has no narrative at all except the Lake County matter.

And it was Raddock, Raddock, Raddock, according to the questioning of Mr. Kennedy, all the way through that. So we have that, and this testimony about the book isn't [fol. 103] going to add one iota to what the committee was endeavoring to do at that time, that he was masterminding the Lake County matter. Because the Lake County matter is not mentioned in the seven pages that are involved, and my fear is, as I have already expressed, that it could be prejudicial, extremely so, and utterly irrelevant and immaterial.

Now, then, the practical suggestion:

I would ask Your Honor for a little privilege:

I have my associates here. I would just like for a moment to consult with them and then address myself back again.

The Court: All right, I will take a very brief recess and let you consult to your heart's content.

(Short recess taken.)

The Court: All right, did everybody do everything they wanted to?

Mr. Tuttle: I am happy to say that I find that all my associates concur in the view that I mentally formed at the

time I was addressing Your Honor, to wit, that we would accept the suggestion made by Mr. Hitz, because we have perfect confidence that when we make a motion to strike out, it would be considered—

The Court: I certainly will consider it, I promise you that.

What I will do I can't tell you, though.

Mr. Tuttle: Of course.

The Court: But, I mean, I won't hold that against you, that you let it come in.

Mr. Tuttle: Thank you, Your Honor.

By Mr. Hitz:

Q. Mr. Tierney, do you have in mind where you stopped reading?

A. Yes, sir.

Q. And will you read without omission, then?

A. (Reading):

"Mr. Hutcheson. Which item is that?

Mr. Kennedy. That would be starting on March 31, 1955.

Mr. Hutcheson. 1955.

Mr. Kennedy. Yes. It was agreed that you would pay [fol. 104] him \$100,000, and he was to produce the 56,000 books. Why did you pay him this \$50,000 prior to the time that he produced any of the books?

Mr. Hutcheson. That is the first item?

Mr. Kennedy. You paid him \$25,000 to write and furnish 6,000 copies of the book by November 1954. This he failed to do. Despite that fact you paid him another \$25,000 in May of 1954. Then you wanted 50,000 more books and it was decided to give him \$200,000 for that.

You paid him \$50,000 on January 31, 1955; another \$50,000 on February 14, 1955, and it was the understanding that he wouldn't receive the second installment of the \$100,000 until after he had produced the books. But despite that, on March 31, 1955, you gave him another \$50,000. Why did you do that?

Mr. Hutcheson. I did not give him the check you referred to, and if you will check the endorsement on that check,

I think you will find that he did not receive it until the end of November or the first of December of that year.

Mr. Kennedy. This check?

Mr. Hutcheson. Yes.

Mr. Kennedy. Why was it made out on March 31, 1955?

Mr. Hutcheson. Sir, I can't answer that.

Mr. Kennedy. Then let's go to November 31, 1955. Why did you give him the \$50,000 there?

Mr. Hutcheson. I was not present when that check was given to him. The committee that was handling this transaction had the authorization, and it was my understanding that they anticipated that the contract would be filed as provided for on March 31, and were then prepared to take care of it.

Mr. Kennedy. Will you tell the committee why—this is a period of time when you were general president—you paid him \$250,000 to produce 56,000 books and the most he produced some 2 years later were 5,000 books?

Mr. Hutcheson. Mr. Kennedy, this whole transaction has been handled by our general executive board, and because of my relationship I have been reluctant to get into it.

[fol. 105] Mr. Kennedy. You are international president, Mr. Hutcheson?

Mr. Hutcheson. I am international president, that is correct, and the general executive board, when the book was completed, felt very well satisfied with the project.

Mr. Kennedy. Who is chairman of the executive board?

Mr. Hutcheson. I am.

Mr. Kennedy. Don't you think you have some responsibility, as chairman of the executive board and international president, to be giving somebody like Mr. Raddock \$250,000 and getting nothing in return?

Mr. Hutcheson. I most assuredly do, and I try to respect my responsibility in every way.

Mr. Kennedy. What about this February 24, 1956? What was the \$50,000 for?

Mr. Hutcheson. That \$50,000 was for additional books, and I authorized that myself.

Mr. Kennedy. For how many books were you going to get?

Mr. Hutcheson. Well, as I told you, when you interviewed me before, there was no definite commitments on it. There was a discussion as to production of the cheaper book, but at that time there was no conclusion reached. I assumed it was for 10,000 books.

Mr. Kennedy. At \$5 a copy?

Mr. Hutcheson. Yes, sir.

Mr. Kennedy. Why, during all of this period—did you ever go to any other book publisher to find out how much it would cost to produce a book?

Mr. Hutcheson. No, I didn't personally do that.

Mr. Kennedy. Don't you think you had that responsibility? Would you tell the committee why, when they produced 5,000 books, a very limited amount, you paid him another \$50,000 to produce 10,000 books at \$5 a copy?

Mr. Hutcheson. I did not realize that the books had not been printed. We knew they were in the process and we thought they were being mailed out. This is an additional item.

Mr. Kennedy. But you already paid him \$250,000?

Mr. Hutcheson. Yes, sir.

[fol. 106] Mr. Kennedy. And you gave him another \$50,000 making it \$300,000?

Mr. Hutcheson. Yes, I did.

Mr. Kennedy. It wasn't your money.

Mr. Hutcheson. I did it under authorization of our general executive board, because we were preparing for our 75th anniversary.

Mr. Kennedy. Don't you know you can buy a book in a bookstore for \$4.50 or \$5. Didn't you realize that you didn't have to pay \$5 a book when you were buying wholesale?

You were producing the book.

Mr. Hutcheson. Well, Mr. Kennedy, I don't set the price of books. I don't know how the price is established.

Mr. Kennedy. Don't you have one of the largest book publishers right across the street from the International Brotherhood of Carpenters in Indianapolis?

Mr. Hutcheson. I have never seen them.

Mr. Kennedy. You have them three or four blocks down the street, then.

Mr. Hutcheson. I don't know who they are.

Mr. Kennedy. Did you ever confer with anybody in Indianapolis as to how much a book would cost?

Mr. Hutcheson. I did not, sir.

Mr. Kennedy. Did you ever confer with anyone to see how much it would cost?

Mr. Hutcheson. I did not, sir.

Mr. Kennedy. Did anyone in the Brotherhood of Carpenters?

Mr. Hutcheson. I don't know.

Mr. Kennedy. On January 9, 1957, you gave him another \$10,000?

Mr. Hutcheson. Yes, that was after Mr. Fisher had died, and the bill came into the office. I had no way of knowing how Mr. Fisher had arranged for it, so I O.K.'d that bill to be paid."

Mr. Tuttle: May I ask for a stipulation to clarify that answer; that Mr. Fisher at the time he died had been for some years general secretary of the United Brotherhood; so we will know who he is?

[fol. 107] Mr. Hitz: Mr. Tierney, do you have any information or knowledge about that?

The Witness: Yes, that's correct.

Mr. Hitz: I will stipulate it.

The Court: All right.

The Witness: (Reading.)

"Senator Curtis. Mr. Chairman, I would like to ask a question. How are expenditures made by the Carpenters' Union?

Mr. Hutcheson. For what, Senator?

Senator Curtis. Do you have vouchers? Who signs the checks? How do you handle an expenditure?

Mr. Hutcheson. Well, it would depend on the type of expenditure. The regular, ordinary expenses go through the secretary and the general treasurer.

Senator Curtis. And who signs the checks?

Mr. Hutcheson. The treasurer and then there are three cosigners who are eligible to sign it.

Senator Curtis. Who are those three cosigners, what officers?

Mr. Hutcheson. Myself, the first general vice president, and the general secretary.

Senator Curtis. How much was the total expenditure made for writing of this book?

Mr. Hutcheson. Well, according to the chart here, it is \$25,000 that was given for research would be the total amount."

By Mr. Hitz:

Q. At that point in the hearing, did the committee have before it and before the witness Hutcheson a chart?

A. Yes, they did.

Q. Is that the chart on page 11873?

A. That's correct.

Q. I wonder if you would turn to page 11873 and, first of all, I would like, Your Honor, in line with Mr. Tuttle's desire for completeness of record, to suggest that we incorporate page 11873 into the testimony of Hutcheson like we incorporated the indictment into the earlier testimony. [fol. 108] It is just referred to in the testimony of Mr. Hutcheson.

The Court: I take it that is acceptable to you, too, isn't it?

Mr. Tuttle: Well, Mr. Hutcheson in what has already been read, has pointed out one error in the chart, and that was that the chart indicates that on March 31, 1955, there was given \$50,000.

Mr. Hutcheson pointed out that the check was not actually delivered according to the endorsement on it, until the end of that year, December, I think.

The Court: Well, I think the error that was pointed out ought to be noted.

Mr. Hitz: Well, of course, it is in Mr. Hutcheson's testimony.

Mr. Tuttle: I really don't feel, Your Honor—I know personally that that chart was made the subject of much contention as to whether it was accurate or not, and consequently, to bring it in here when the chart itself is not made the subject of any discussion, except for this one question:

"Well, according to the chart here, it is \$25,000 that was given for research would be the total amount."

And then there are other errors. For example, this \$25,000 is described in the chart as to write and publish the

book. Well, that, of course, is not true. The \$25,000, according to the testimony already here, was merely for a preliminary payment for research.

The Court: For gathering data, yes.

Mr. Tuttle: Yes, to get the data together. But the chart puts it down, and of course the chart is written with a purpose to leave our position not very commendable with the public.

It says right there, "To write and publish the book, \$25,000." That wasn't true at all. That was not the contract.

The contract was for research.

Mr. Hitz: The chart was before Mr. Hutcheson, and he had an opportunity then under oath to make any corrections that he desired to make, and he made at least one.

Mr. Tuttle: Not at all. He had no opportunity to make [fol. 109] corrections. It was his business to answer questions as they came along, and he was never asked to make an appraisal of the chart. He was simply asked this one question:

"Well, according to that chart here, it is \$25,000 that was given for research would be the total amount."

Now, he makes the correction there. He says,

"\$25,000 is for the research."

The committee may have had a different view, but we have to go by this, and I must oppose bringing in a chart which was the subject of contention long before this witness was reached, and which is not made the subject of any analysis in the questioning of this witness, nor is he given any opportunity to address himself to the chart. I don't think that would be fair at all.

The Court: Well, is there any testimony in the whole business that goes to the accuracy of the chart?

Mr. Hitz: Oh, yes, there is, there is much testimony.

I think I am accurate in saying that there were several staff members who compiled the chart who testified under oath.

Am I correct in that, Mr. Tierney?

The Witness: That's correct.

Mr. Hitz: That is further indication that this whole volume, really, has got some relevancy to this prosecution although I don't intend, of course, to read more of it than we have indicated already. But it's pretty hard to separate out, and we are going to have to examine legislative purpose, the indictment questions, and the narrow testimony in which those questions arose from this entire investigation on this broad subject of the book, Mr. Raddock, and—

The Court: Who put the chart in evidence?

Mr. Hitz: It was a committee exhibit prepared by the staff, as I understand it.

Is that correct, Mr. Tierney?

The Witness: That's correct.

The Court: Prepared by the staff of what?

[fol. 110] The Witness: The staff of the select committee.

The Court: The committee itself?

The Witness: The committee itself, that's correct.

The Court: Prepared the chart?

The Witness: That's correct. I participated in the preparation of the chart.

Mr. Tuttle: Yes.

I stated myself that the committee prepared the chart and hung it up for view at an earlier session of the committee.

My point, Your Honor, is—and I don't want to over-stress it—is that the chart was the subject of considerable challenge.

In the first place, in the description given of what the contract was, because the contract was in writing, and also this reference to March 31st as the date for the payment of \$50,000, which would have been before certain things were done about the book; whereas the check was not actually delivered until November, December, and Mr. Hutcheson says that.

But if Your Honor will have it in mind, that we are not endorsing—

The Court: Yes, I do not think we have to endorse it to have it available for review.

Mr. Tuttle: As long as it is understood that we don't endorse it—

The Court: Well, let it be so understood, then.

Mr. Tuttle: Yes.

The Court: Let it be filed with the notation that the accuracy of it has been challenged.

Mr. Tuttle: Yes, sir.

The Court: All right.

Mr. Hitz: And I will agree that Mr. Tuttle does not vouch for the accuracy of the indictment either.

The Court: Yes.

Mr. Tuttle: Now, that is a concession. I appreciate that.

The Court: All right.

[fol. 111] By Mr. Hitz:

Q. Now, Mr. Tierney, had you read the entire page of 12108?

A. Yes.

Q. Now will you continue to read without omission:

A. (Reading):

"Senator Curtis. The research and the writing.

What does it all total?

Mr. Hutcheson. Well, all other items include a certain number of books, Senator.

Senator Curtis. Yes. And how much does that amount to? The grand total on this book project is what?

Mr. Hutcheson. \$310,000.

Senator Curtis. \$310,000.

From what account in the Carpenters International would this be paid? Your general account?

Mr. Hutcheson. Sir?

Senator Curtis. From what account was this \$310,000 paid? Was it your general account?

Mr. Hutcheson. From the general fund; yes, sir.

Senator Curtis. And that is made up from the remissions that are made by local carpenters' unions?

Mr. Hutcheson. Yes, sir.

Senator Curtis. What determines how much money they contribute to the international?

Mr. Hutcheson. The local unions?

Senator Curtis. Yes.

Mr. Hutcheson. The per capita tax?

Senator Curtis. Yes, the per capita tax.

Mr. Hutcheson. The membership decides themselves on a per capita tax. At the present time it is \$1.25.

Senator Curtis. How often?

Mr. Hutcheson. A month.

Senator Curtis. But it is the same for all local unions?

Mr. Hutcheson. No. No, sir. We have two different [fol. 112] statutes of local unions, what is known as beneficial local unions paying \$1.25, and a semibeneficial local union pays 65 cents.

Senator Curtis. What is the difference?

Mr. Hutcheson. The difference is in the funeral donations and home and pension benefits.

Senator Curtis. Those that share in what might be determined fringe benefits pay \$1.25 and the others pay 65 cents?

Mr. Hutcheson. That is right, sir.

Senator Curtis. That is per member of the local?

Mr. Hutcheson. That is right, sir.

Senator Curtis. Not all of your membership is voluntary; is it?

Mr. Hutcheson. It couldn't be any other way, Senator.

Senator Curtis. Aren't there situations where men are required to belong to the Carpenters' Union in order to go on a job or stay on a job?

Mr. Hutcheson. Well, I suppose there is where union-shop agreements are in effect, and they would be required to follow out the provisions of the contract.

Senator Curtis. You have a number of union shop agreements; do you not?

Mr. Hutcheson: Yes.

Senator Curtis. The point I wish to bring out for the record is this: That a voluntary association certainly could spend any money that the proper body or the membership itself decided to spend on a book about a president or a history of the organization, but I seriously question the right of any organization to spend money for other than the collective bargaining purposes where their membership, in part, is maintained under a requirement that men must pay it in order to hold their job.

So separate and apart from whether or not the arrangements with Mr. Raddock were wise and prudent trusteeship, I further raise the question of the right to compel individuals who may, over a long period of time or for a short period of time, have to contribute a part of the \$310,000 for a book.

[fol. 113] Mr. Hutcheson. Well, sir, our general executive board was under directions from our general convention of 1954, directing that they see to it that a sufficient number of books were purchased and given proper distribution. The general executive board in going into the project, and after being directed by the convention, felt that they were required to carry out the directive issued to them.

Senator Curtis. One of the arguments, and the principal argument, as I see it, given for compulsory unionism and the union shop is that every man should pay a part of the cost of the collective-bargaining expenses and the gains that he gets in wages and other benefits, and that there shouldn't be any free riders.

That argument is freely made. But I can't see any argument for collecting dues from people who are required to join an organization or lose their job, and collecting them in the amounts that call for items of travel to Europe, such as we have here, and the purchase of citrus groves, and expenditures of \$310,000 on books about a late president of the organization.

I seriously question both the moral and legal right for such expenditures.

Mr. Hutcheson. Well, sir, our general executive board and I am sure the convention felt the same way, that it would make good public relations to circularize this book. Others pay certain amounts for public relations and we felt that this was our way of making our contribution. We have not had one single complaint from any member in respect to this project.

Senator Curtis. That is all, Mr. Chairman.

Senator Ervin. I would advise the next time you go into a project like that you sort of look around and invite a little competition. The evidence before this committee indicates very strongly that you could have gotten this book written by the foremost historian in the United States for far less money.

Mr. Hutcheson. That is the reason you ought to do a little investigating before you commit yourself to the writing of a book by one man without looking around and try- [fol. 114] ing to find out about some other folks to have charge of the writing and publication. In other words, frankly, the evidence indicates that your board was about as inexperienced in matters like this as it is in the practice of medicine and surgery, or sending sputniks into the stratosphere.

Mr. Hutcheson. I don't think they are experienced in it, Senator. I would have to agree with you.

Senator Ervin. Except now I think you are. Which reminds me of these two men that went into business down in my country, and the business wound up with one of them having the business. I was talking to the fellow, one of the members who had been ousted, and he said when he went into the business with this man, that he furnished the capital and the other fellow furnished the experience, and he said 'Now this fellow has the capital and I have the experience.'

Mr. Kennedy. Did it ever concern you, Mr. Hutcheson, that this book was not being produced on schedule?

Mr. Hutcheson. I beg your pardon?

Mr. Kennedy. Did it ever concern you that this book was not being produced on schedule?

Mr. Hutcheson. Yes. We were all concerned, because we were interested in having production and getting it out into circulation.

Mr. Kennedy. Then why did you keep giving him more money, when you were concerned?

Mr. Hutcheson. Well, I am sure that Secretary Fisher, and I know I was myself, felt that the book was being published and was being mailed out in the proper time.

Mr. Kennedy. When was it in fact that you found that the book was not being mailed out?

Mr. Hutcheson. In 1957 I received information at that time that the book was being distributed very slowly.

Mr. Kennedy. How did you find that out?

Mr. Hutcheson. I had a survey made in the State of Indiana.

Mr. Kennedy. Why did you have a survey made?

[fol. 115] Mr. Hutcheson. To determine—the survey originally started to determine what the reaction of the book was, which, of course, then brought out the number of books that had been distributed.

Mr. Kennedy. How much did you pay for the survey?

Mr. Hutcheson. I don't recall.

Mr. Kennedy. Some \$2,900?

Mr. Hutcheson. Possibly so. I don't recall the exact figures.

Mr. Kennedy. Did you find in the survey that out of 907 people that were supposed to receive the book, only 39 were known to have received the book?

Mr. Hutcheson. Well, whatever the report was, Mr. Kennedy. I don't have it before me.

Mr. Kennedy. During this period of time did you try to get a list? Mr. Raddock under the contract was supposed to furnish you a list of those to whom he was sending the book. Did you get that list from him?

Mr. Hutcheson. I received a list, and that is what the survey was based on.

Mr. Kennedy. Then he was defrauding you at that time?

Mr. Hutcheson. I don't know that I could say he defrauded me.

Mr. Kennedy. Did he furnish you a list of those who had been recipients of the book?

Mr. Hutcheson. No, I did not say that. I received the list only. It evidently was the list that he intended to mail the books to, because it has been checked against the list now that we have received, and all but three on that list have received the book.

Mr. Kennedy. When did you finally receive the list of those who got the books? As of the time I interviewed you in January of this year you hadn't received any such list.

Mr. Hutcheson. We had the list delivered to us at Lakeland, Fla., at the general executive board meeting in February of this year.

Mr. Kennedy. February 1958?

Mr. Hutcheson. That is right.

Mr. Kennedy. Some 3 months after we began our investigation?

[fol. 116] Mr. Hutcheson. That is right.

Mr. Kennedy. Under the terms of the contract, Mr. Hutcheson, you were supposed to receive the list of those who were to get the book back in 1955. March of 1955, and you didn't receive it until February 1958, some 3 years later?

Mr. Hutcheson. We could hardly have received it in 1955, Mr. Kennedy, when the book wasn't completed until December of 1955.

Mr. Kennedy. Well, under the terms of the contract, the contract that you signed with Mr. Raddock, you were to receive the list back in March of 1955. I have the contract right here. Can you give us any explanation for that?

Mr. Hutcheson. Well, I can't give you any explanation, because there could be no list at that time.

Mr. Kennedy. It says 'Being agreed the contract will be performed by March 31, 1955.' That is what the contract says.

Mr. Hutcheson. That is true, but it wasn't completed, as is shown, until November of 1955.

Mr. Kennedy. Did you take some action at all against Mr. Raddock to try to get your money returned?

Mr. Hutcheson. No, we didn't take any action to try to get our money returned. What we were interested in was completing the project and having the book out for distribution.

Mr. Kennedy. Now that you have found from the testimony before the committee that you should have only paid about a dollar per copy for the book, are you going to take any legal action against Mr. Raddock?

Mr. Hutcheson. Mr. Kennedy, when this hearing is completed, I intend to obtain a transcript of the whole proceeding and have each member of our board review it and call the board into meeting and let them make the decision.

Mr. Kennedy. Based on the information you have so far, do you intend to recommend to the board that some legal action be taken against Mr. Raddock for defrauding the Carpenters?

Mr. Hutcheson. I could make no comment on that until I [fol. 117] review it myself and read the testimony. I haven't attended all of these hearings.

Mr. Kennedy. And you haven't reviewed the testimony?
Mr. Hutcheson. Not completely, no, sir.

Mr. Kennedy. Well, you know what the situation is. Certainly it has been brought to your attention. Certainly you must be interested, being the international president. You say you haven't enough information yet to be able to determine whether you are going to take any legal action against Mr. Raddock?

Mr. Hutcheson. I cannot make any commitment in that respect, Mr. Kennedy. I said it is a case to be reviewed by our general executive board who instituted this project, and this and any other subjects that are considered in this hearing.

Mr. Kennedy. Then you also paid Mr. Raddock some \$83,000 for the 75th anniversary dinner and for other public relations activities"—

Mr. Tuttle: Excuse me for interrupting. This merely takes up the 75th anniversary expenses, and other matters.

May I ask if Mr. Hitz wants that read?

Mr. Hitz: There is only a page and a half and I feel there is enough virtue in continuity and context, that perhaps it would be better to read it, so then we will have the entire picture of Mr. Hutcheson's testimony and the background of the indictment.

I do want it read.

Mr. Tuttle: Your reading will be subject to the same right on my part to appeal to Your Honor to strike it out.

The Court: That's right, but at the same time I want you both to keep track of what part has been put in subject to that sort of objection.

Mr. Tuttle: Yes, sir.

The Court: All right.

By Mr. Hitz:

Q. And without omission, Mr. Tierney—

A. (continuing:)

"—for you. We found from a review of the records that the most he could have spent in that connection was some \$25,000. So he got overpaid some 3 or 4 times on that also. [fol. 118] Mr. Hutcheson. Well, I couldn't determine how

you arrived at your figures. I know that during 1956 there was our 75th anniversary of the Brotherhood of Carpenters. It consisted of eight regional conferences, and Mr. Raddock attended each and every one, and prepared the arrangements, procured the speakers, and he did considerable work, and working night and day all during that period.

Mr. Kennedy. Was he to receive a salary or payment for the work he was doing during this period?

Mr. Hutcheson. He did not receive a salary. We received a bill at the end of the period.

Mr. Kennedy. Did you get any breakdown as to how he was spending the money you were giving him, if it was supposed to be for expenses?

Mr. Hutcheson. None other than was included in the documents which were turned over to you.

Mr. Kennedy. Did you ask for any vouchers, any support for any of these bills?

Mr. Hutcheson. No.

Mr. Kennedy. That is all together some \$400,000 that was paid to Mr. Raddock, for which there is very little support. Did you, Mr. Hutcheson, order these paperback books from Mr. Raddock?

(At this point, Senator Curtis left the hearing room.)

Mr. Hutcheson. I did not order them directly, no, sir. They had been discussed on several occasions.

Mr. Kennedy. How many books was Mr. Raddock to produce, how many hard-bound books was Mr. Raddock to produce under the contract?

Mr. Hutcheson. How many did he?

Mr. Kennedy. How many was he to produce?

Mr. Hutcheson. Fifty-six thousand, originally, with an additional 10,000 making it 66, plus the 2,000.

Mr. Kennedy. So that would be 68,000?

Mr. Hutcheson. I would say so.

Mr. Kennedy. How many has he produced so far? Don't you know, Mr. Hutcheson?

[fol. 119] Mr. Hutcheson. Not without looking at the figures I don't have that report, that final report.

Mr. Kennedy. Do you know if he has met all the terms of the contract?

Mr. Hutcheson. Sir?

Mr. Kennedy. Has he met the terms of the contract?

Mr. Hutcheson. Yes, he has now.

Mr. Kennedy. He what?

Mr. Hutcheson. Yes, sir, he has.

Mr. Kennedy. Would you count up these books with me?

Here is 5,000, 3,100 is 8,100, plus 10,000 is 18,100, plus 40,000 is 58,000 books. He is still 9,900 short, Mr. Hutcheson.

Mr. Hutcheson. Well, there is an additional item there, Mr. Kennedy, of 13,000 paperbacks that you didn't include.

Mr. Kennedy. I just asked you that, whether that was under the agreement, and you told me it was not, that he was to produce 68,000 hard-covered books. That is according to your own testimony. That is what you told me. He only produced 58,100. Are you going to take any legal action against him on that?

Mr. Hutcheson. Sir, I am going to submit the entire matter to the general executive board for their consideration.

Mr. Kennedy. But you are not even going to say whether you are going to try to get your other 9,900 books? You wouldn't even tell that to the committee?

Mr. Hutcheson. The general executive board is the functioning body, Mr. Kennedy, and the one that instituted this project. Therefore, it is their responsibility to review the transcripts from this hearing and make their decision on it.

Mr. Kennedy. Why have you had such a friendly relationship with Mr. Raddock during this period of time, Mr. Hutcheson? Has he performed some special tasks for you?

Mr. Hutcheson. No, sir.

Mr. Kennedy. He has not?

[fol. 120] Mr. Hutcheson. No, sir.

Mr. Kennedy. What kind of work has he done for you?

Mr. Hutcheson. Public relations work and so forth, during 1956, 75th anniversary, as outlined by you just a few minutes ago.

Mr. Kennedy. Has he done any illegal act for you on your behalf?

Mr. Hutcheson. On advice of counsel, I refuse to answer the question on the ground that it relates solely to

a personal matter not pertinent to any activity which the committee is authorized to investigate, and also it relates or might be claimed to relate to or aid the prosecution of the case in which I am under indictment and thus be in denial of due process of law.

Mr. Kennedy. Mr. Chairman, this is a man who has received over 500,000 from the Carpenters over a period of time, and I am asking a question as to whether Mr. Raddock has performed any illegal acts on behalf of Mr. Hutcheson. I think it is very pertinent to the investigation."

Mr. Tuttle: I just want to ask Your Honor to observe that the matter of the books has been apparently concluded at this point and now they are taking up something else, and it is in connection with that and that only, this something else, that Mr. Hutcheson is stating that on advice of counsel, and the something else is this land matter in Indiana.

The Court: Well, I can't tell that it is, but he does ask him if he has performed any illegal matter for him, and that is what I understand that he says on advice of counsel he refuses to answer.

Mr. Tuttle: Yes, but the context as we go along, I am just calling Your Honor's attention to the matter of the book, it has been laid aside.

The Court: Maybe it has. It is not clear to me that it has but I will take your interpretation of it for the moment.

Mr. Tuttle: Thank you, Your Honor.

The Witness (Reading):

"The Chairman. Mr. Raddock is not in the indictment?
Mr. Kennedy. No, he is not.

The Chairman. He is not a defendant?

Mr. Kennedy. He is not.

[fol. 121] The Chairman. This question is related to union activities?

Mr. Kennedy. That is correct, and does not affect in any way the merits of the indictment.

Senator Ervin. Mr. Chairman?

The Chairman. Let me suggest that the question be re-phrased and ask him if he performed any illegal acts for him in connection with his official position or his relationship to the international union that he represents.

Senator Ervin. Mr. Chairman, I was going to make a suggestion like that, but I would suggest that it be a little more restricted, if he performed any illegal act on behalf of the union rather than on behalf of Mr. Hutcheson.

The Chairman. All right.

The Chair will ask the question: Has Mr. Raddock performed for you on behalf of the union any illegal act?

Mr. Hutcheson. Definitely not.

The Chairman. Has he received from the union payment for acts performed in your behalf and for you as an individual?

Mr. Hitz: I have an extra copy of the indictment if you care to have it as a working copy while we are going through the indictment question at this point, Your Honor.

The Court: All right.

(Document handed up.)

The Court: Is that the only copy you have got?

Mr. Hitz: Oh, no, I have a drawer full of them, Your Honor.

The Court: All right.

Mr. Hitz: And the question was on page 12155 just read by Mr. Tierney, and at the top of that page.

Now, will you continue without omission, Mr. Tierney?

The Witness (Reading):

(Witness conferred with counsel.)

Mr. Travis. May I have the question read, please?

(The pending question was read by the reporter.)

(Witness conferred with counsel.)

[fol. 122] Mr. Hutcheson. On the advice of counsel, I refuse to answer the question on the ground that it relates solely to a personal matter, not pertinent to any activity which this committee is authorized to investigate, and also it relates or might be claimed to relate to or aid the prosecution in the case in which I am under indictment, and thus be in denial of due process of law.

The Chairman. The Chair overrules the objection, with the approval of the committee, and the Chair orders and directs the witness to answer the question.

(Witness conferred with counsel.)

Mr. Hutcheson. Mr. Chairman, I renew my refusal.

Senator Ervin. Mr. Chairman, I would just like to make an observation at this point.

The Chairman. Let him finish, if he will.

Did you finish your answer? The Chair is now ordering and directing you to answer the question, with the approval of the committee.

Mr. Hutcheson. On advice of counsel, Mr. Chairman, I refuse, for the same reasons as given previously.

The Chairman. All right, Senator Ervin.

Senator Ervin. Mr. Chairman, I just wanted to suggest that in my judgment there is no validity in the first point of his objection. This question does not relate to a purely personal matter. It relates to the use of union funds, and certainly this committee has authority to investigate the use of union funds.

The Chairman. For that reason, the Chair ordered the witness to answer the question, because we certainly have jurisdiction to interrogate about the expenditure of union funds, and the question was predicated upon the payment out of union funds, which might be an improper expenditure of union funds to perform a personal service for the witness. I think that the question is legitimate. Its objective is obvious, to ascertain the conduct of this witness with respect to his position in a fiduciary capacity as trustee of union money. The question stands.

Do you still refuse to answer the question?
[fol. 123] Mr. Hutcheson. Yes, sir.

The Chairman. Have you paid out of union funds to Mr. Maxwell C. Raddock moneys in connection with services rendered for you in a legal matter where you may have been involved, or being in prospect of being involved, either by civil action or by criminal action, other than services he may have performed for you, if any, in connection with the matters for which you now stand indicted?

(Witness conferred with counsel.)

Mr. Hutcheson. On advice of counsel, I refuse to answer the question on the ground that it relates solely to

a personal matter not pertinent to any activity this committee is authorized to investigate, and also it relates or it might be claimed to relate to or aid the prosecution in the case in which I am under indictment and would thus be a denial of due process.

The Chairman. The Chair excluded in the question the case for which you now stand indicted, or the acts for which you may stand indicted. I am asking if you have used union funds to pay him for services rendered to you, not to the union but to you personally, in connection with legal matters, either civil or criminal, in which you were involved or in which you potentially may have become involved.

I don't want there to be any misunderstanding about this question. You have counsel. I am talking now about union funds, union money, for which you are responsible and accountable and over which this committee has jurisdiction to investigate.

Mr. Travis. Mr. Chairman, of course, the refusal was not limited solely to a personal matter, as you will recall.

The Chairman. You may advise your client as to what you want him to do. I am sure he wants to take your advice. But the Chair is pursuing what he conceives to be this committee's duty.

Mr. Travis. Mr. Chairman, very respectfully, in view of what I have heard in the prior testimony before this committee, I believe I know the direction that the question takes, and it is my duty to advise this witness not to answer, and I do so advise him.

[fol. 124] The Chairman. Then the witness, on the advice of counsel refuses to answer the question?

Mr. Hutcheson. Yes, sir.

The Chairman. I understand, it is very clear now, that you are not invoking the fifth amendment privilege?

Mr. Hutcheson. That is right, sir, I am not invoking it.

The Chairman. You are not exercising that privilege?

Mr. Hutcheson. No, sir.

The Chairman. You are challenging the question and the jurisdiction of the committee for the reasons you have stated and for those reasons only?

Mr. Hutcheson. Yes, sir.

The Chairman. All right. We have a clear understanding about that.

Now, I will ask you another question. Have you, unrelated to this offense charged in the indictment now against you, engaged the services of Mr. Raddock, and have you paid him out of union funds for the performance of those services, to aid and assist you in avoiding or preventing an indictment being found against you or being criminally prosecuted for any other offense other than that mentioned in this indictment?"

Mr. Hitz: Excuse me.

That is Count 2, Your Honor.

All right, proceed, Mr. Tierney.

The Witness: (Reading)

"(Witness conferred with counsel.)

Mr. Hutcheson. On advice of counsel, I refuse to answer on the same grounds as previously stated, sir.

The Chairman. The Chair with the permission of the committee, with its approval, orders and directs the witness to answer the question.

(Witness conferred with counsel.)

Mr. Hutcheson. I still refuse to answer on the same ground, sir.

The Chairman. Did you engage the services of Mr. Raddock and pay him for those services out of union funds to [fol. 125] contact, either directly or indirectly, the county prosecuting attorney, Mr. Holovachka, given name Metro, in Lake County, Gary, Ind.? Bear in mind, the question is: Did you engage him and pay him to do that out of union funds?

Mr. Hitz: That's Count 3.

The Court: Yes.

The Witness (Reading):

"(Witness conferred with counsel.)

Mr. Hutcheson. On the advice of counsel, I refuse to answer on the same ground as previously related.

The Chairman. The Chair, with the approval of the committee, orders and directs the witness to answer the question.

Mr. Hutcheson. I still refuse for the same reason, Mr. Chairman.

The Chairman. Have you engaged Mr. Raddock to perform services, personal services, for you, of any nature whatsoever, and paid him for such services out of union funds? I will ask that over the period of the past 5 years?

(Witness conferred with counsel.)

Mr. Hutcheson. On the advice of counsel, I refuse to answer on the same ground as previously related.

The Chairman. With the approval of the committee, the Chair orders and directs the witness to answer the question.

Mr. Hutcheson. I still refuse, sir.

The Chairman. The witness understands that the Chair is interrogating him regarding union funds; do you not?

(Witness conferred with counsel.)

Mr. Hutcheson. Yes, sir.

The Chairman. With that understanding, knowing that I am interrogating you only about the expenditure of union funds to Mr. Raddock for personal services he may have performed for you and not for the union, do you still decline and refuse to answer the question?

(Witness conferred with counsel.)

Mr. Hutcheson. Yes, sir, for the reasons stated.

The Chairman. And, again, not invoking the privilege of the fifth amendment, you stand only and solely upon the statement you have read?

[fol. 126] Mr. Hutcheson. Yes, sir.

The Chairman. And you are not exercising the privilege that, by answering, a truthful answer might tend to incriminate you?

(Witness conferred with counsel.)

Mr. Hutcheson. No, sir.

The Chairman. Then the record is made, so far as I know. As I understand your position, you have acted on the advice of counsel and it amounts to simply challenging the jurisdiction of this committee to interrogate you about the expenditure of union funds for personal services that

may have been rendered for you rather than for the union. Is that correct?

(Witness conferred with counsel.)

Mr. Travis. Mr. Chairman, I would like to direct the committee's attention at this time to the fact that the refusal goes over and above the jurisdictional question of the committee, and it goes into a matter which—when the statement that the Chair just made refers to the expenditure of union funds for personal matters—have also involved Maxwell Raddock, and in the prior testimony the committee has shown that that relates to this Lake County transaction, for which Mr. Hutcheson is under indictment.

The Chairman. Well, I think we may very well disagree about that, but I would like to have the answer to my question. The witness can answer the question or refuse to answer it, or whatever you want to advise him to do.

Mr. Travis. May I have the question read, please?

(The pending question was read by the reporter.)

(Witness conferred with counsel.)

Mr. Hutcheson. Mr. Chairman, the answer is no, because the question goes beyond the question of a personal matter and reaches into the area of a question under which I am indicted.

The Chairman. The Chair does not intend to and is not interrogating you about anything concerning the indictment. I am asking you the question of whether you have used union funds to pay Max C. Raddock for personal services [fol. 127] rendered to you, period.

(Witness conferred with counsel.)

Mr. Hutcheson. Sir, counsel advises me that it does reach into the matter under which I am indicted, and advises me to refuse to answer.

The Chairman. Do you mean by that statement that you have just made, that counsel advises you that it does reach into that matter, that he was employed in connection with the matters in the indictment some way? You can answer

that 'yes' or 'no' or refuse to answer it. I am not talking about that.

Mr. Hutcheson. On advice of counsel, I refuse to answer on the same grounds as previously related, sir.

The Chairman. The Chair, with the approval of the committee, orders and directs you to answer this question. I will try to repeat the question, just as it is in the record.

Have you paid Max C. Raddock out of union funds for personal services rendered to you at any time within the past 5 years?"

Mr. Hitz: That is Count 4, Your Honor.

The Court: Yes.

The Witness (Reading):

"(Witness conferred with counsel.)

Mr. Hutcheson. On advise of counsel, I refuse to answer on the same ground as previously related.

The Chairman. With the approval of the committee, the Chair orders and directs the witness to answer the question.

Mr. Hutcheson. I still refuse, sir.

The Chairman. Proceed, Mr. Kennedy.

Senator Ervin. Mr. Chairman?

The Chairman. Senator Ervin.

Senator Ervin. Have you used union funds to pay Max C. Raddock for any services rendered to you personally, wholly disassociated from any matters out of which the pending criminal charge arose?

(Witness conferred with counsel.)

Mr. Hutcheson. On advice of counsel, I refuse to answer on the same ground."

[fol. 128] Mr. Hitz: Count 5, Your Honor.

The Witness (Reading):

"(Witness conferred with counsel.)

Mr. Hutcheson. On advice of counsel, I refuse to answer on the same ground.

The Chairman. The Chair, with the approval of the committee, orders and directs the witness to answer the question.

Mr. Hutcheson. I still refuse, sir.

Senator Ervin. Is your refusal to answer questions concerning the use of union funds in situations wholly disassociated from any of the circumstances connected with the indictment against you based upon the theory that the due process clause embraces the protection afforded by the fifth amendment against self-incrimination?

(Witness conferred with counsel.)

Mr. Hutcheson. Sir, my attorneys advise me that that is a question on constitutional law and I am not qualified to answer it."

The Court: I don't understand that question and answer. What was it?

The Witness (Reading):

"Senator Ervin. Is your refusal to answer questions concerning the use of union funds in situations wholly disassociated from any of the circumstances connected with the indictment against you based upon the theory that the due process clause embraces the protection afforded by the fifth amendment against self-incrimination?"

Mr. Hutcheson. Sir, my attorneys advise me that that is a question on constitutional law and I am not qualified to answer it.

Senator Ervin. Then are you telling this committee that you are not refusing to answer any of these questions concerning the use of funds in areas outside of the matters covered by the indictment, are not based in any way upon your belief that your answers to the questions would tend to incriminate you?

(Witness conferred with counsel.)

Mr. Hutcheson. Sir, the grounds that have been related [fol. 129] and included in the record are the grounds that I am going to stand on, on this question.

Senator Ervin. What I am asking you is this. You say you are not invoking the privilege of self-incrimination; is that right?

Mr. Hutcheson. That's right.

Senator Ervin. And you do not contend that due process of law, in and of itself, includes a privilege against self-incrimination?

(Witness conferred with counsel.)

Mr. Hutcheson. Sir, that is a legal question. I am not qualified to answer.

Senator Ervin. Well, you have been advised by your counsel. You base your right to answer on the advice of counsel. So, I ask you if your counsel has given you to understand, and if that influences your refusal to answer, that the due-process clause does embrace the privilege against self-incrimination.

(Witness conferred with counsel.)

Mr. Hutcheson. Sir, counsel has not advised me on that particular issue.

Senator Ervin. You realize that the invocation of a constitutional privilege is a matter which is personal to a witness, do you not?

(Witness conferred with counsel.)

Mr. Hutcheson. I am sorry, but I just don't know anything about it, sir.

Senator Ervin. Do you mean that you don't understand the fact that a person who is a witness does not have to invoke a constitutional privilege against testifying? In other words, don't you realize that that is a privilege which a witness is allowed by the Constitution itself to waive?

(The witness conferred with his counsel.)

Mr. Hutcheson. Sir, that is a matter on which I am not informed.

Senator Ervin. Well, you can ask the counsel. You are taking advice from your counsel. Ask the counsel if that is not a fact; that a witness has the right to waive any constitutional privilege against testifying, whether it is based on the 14th amendment, or the 1st amendment, or [fol. 130] the 5th amendment. You are acting on advice of counsel; so ask your counsel's advice on that, and advise the committee.

(The witness conferred with his counsel.)

Mr. Hutcheson. Sir, I have been advised that certain matters related to this subject might be claimed to relate or to aid the prosecution of the case in which I am under indictment and, thus, be in denial of due process of law.

Senator Ervin. The committee has tried, the counsel of the committee, the chairman of the committee, and myself have tried, to make it as clear to you as the English language permits anyone to make anything clear, that these questions relate to matters that are wholly disassociated from the circumstances out of which the indictment now pending against you arose, and you tell me that you still do not understand that we are refraining from asking you questions about the matters out of which the circumstances connected with the indictment are not concerned?

Mr. Travis. Senator, I am a little confused myself on that question. Could it be read again?

Senator Ervin. We have repeatedly stated, to Mr. Hutcheson, that we are not asking him to make any revelations about any circumstances that have any connection whatever with the indictment pending against him, but we are asking him about the use of union money under circumstances entirely disassociated from the matters out of which the indictment arises.

(The witness conferred with his counsel.)

Mr. Travis. Mr. Chairman, of course, I have to assume the responsibility for advising this witness, and have done so, and the specific question which I believe you referred to about the expenditure of union funds for matters not connected with the union, if answered, and a refusal to answer the other question as to whether it was connected with union matters might lead to the inference that Mr. Raddock was paid moneys out of union funds for personal matters.

Senator Ervin. With all due respect to counsel, that does not seem to be a really relevant observation. What [fol. 131] we were talking about, Counsel, was that we were asking him about the use of union funds for pur-

poses wholly disassociated with the circumstances out of which the indictment arises.

Mr. Travis. I think that is just where the inference might arise.

Senator Ervin. In other words, you are telling the committee that, in your opinion, if he answers a question about matters wholly disassociated from the circumstances out of which the indictment arises, that will constitute an inference that he made payments in connection with the circumstances out of which the indictment arose?

Mr. Travis. Yes.

Senator Ervin. That is something I am unable to comprehend, with all due respect to counsel. I have a high respect for the function of counsel. Certainly, as a practicing lawyer, and while in this committee, I always have resented any effort to question a man about circumstances that involved a pending indictment. But the fact that a man is involved in a pending indictment does not give him a right under either the 14th amendment or any other amendment that I know of to refuse to answer questions in wholly disassociated areas. That is what this committee is talking to.

Mr. Travis. I hope you realize, Senator, it is a very delicate question for me and a very heavy responsibility. But, knowing what I do about the matter under which he is indicted, I have to exercise my judgment as best I can. There are certain areas that I have determined I cannot safely allow Mr. Hutcheson to testify, and which I think would violate his fundamental rights if he was forced to.

Senator Ervin. I understand your position very clearly; that it is your opinion that Mr. Hutcheson can't give the committee any information about the use of union funds in any area of his personal activity for fear that it might raise some inference against him in a matter wholly disassociated. I was interested in the question as to whether his refusal to answer is based in any way upon the understanding that the 14th amendment includes a right to refrain from self-incrimination.

Mr. Travis. I don't think the witness, himself, under-

stands anything about constitutional law, if I may put it that way.

[fol. 132] Senator Ervin. I was asking so that this committee can clarify itself, and so that some day maybe some court will rule on the question of where the people that drew the Constitution wasted the ink that wrote the fifth amendment on the provision against self-incrimination when they put in the due-process clause. I was trying to ask him to ask his counsel if the advice of counsel was based in any part, the advice of counsel that he should refrain from answering, was based in any part upon the understanding or theory that the due-process clause embraced within its purview the right to refrain from self incrimination as set forth in the fifth amendment.

Mr. Travis. Of course, I think any man under indictment guaranties of due process of law should not be questioned in any form concerning any matter that might remotely in any way aid the prosecution in that case.

Naturally, this committee can't sit as prosecutors or judges or jurors in that matter under which Mr. Hutcheson is indicted.

I think there are fundamental guarantees to any person under indictment that that matter shall be tried solely in the forum where the indictment lies.

Senator Ervin. Your theory is a very intriguing one, and that is that if a man is under indictment for any offense, he can't be asked any questions about anything else. That is what it amounts to, even though these other things are wholly disassociated.

But I am interested in the question of the scope of the 14th amendment on this basis because the committee wants to know exactly what the man is refusing to answer concerning wholly disassociated things.

That is all.

Before I pass over, I respect the duty of counsel. I have been a lawyer many times for many, many clients, and I regretted many times when I practiced law that I could not find a basis for getting quite as complete an exemption from testifying.

Mr. Travis. I think, Senator, you have found, too, since you started practicing law, that today the Constitution

might have a little different meaning over the intervening years in some respects.

[fol. 133] Senator Ervin. I will make the confession that what I was taught about Constitution in law school and what I used to read in lawbooks about it is somewhat outmoded and that some of the principles that have come about are as variable and changing as a shifting in the temporary occupants of the seats on the bench of the Supreme Court of the United States.

The Chairman. I think the record is clear from the witness' testimony and from the record made that the witness has not and does not invoke the fifth amendment privilege in his declining to answer the questions that have been put to him.

Are we correct then in that understanding?

Mr. Travis. Very definitely, Senator.

Mr. Kennedy. Let the witness answer.

The Chairman. I am asking the witness.

Mr. Hutcheson. Yes, sir.

The Chairman. My understanding, then, is correct.

Mr. Hutcheson. Yes, sir.

The Chairman. So there will be no misinterpretation of the record, I simply wanted to have the witness state it again.

All right, proceed.

Mr. Kennedy. Mr. Chairman, we have some material that I will just ask Mr. Hutcheson about.

One is Mr. Raddock's trip down here to Washington, D. C., when he stayed at the Hotel Washington, and his bill was paid out of union funds.

Could you tell us what he was doing down here for the union?

Mr. Hutcheson. I would have to know the date, Mr. Kennedy.

Mr. Kennedy. I will give it to you.

He was here on September 3, of 1957, September 3d through the 5th, 1957, and he stayed at the Hotel Washington.

(The witness conferred with his counsel.)

Mr. Hutcheson. I couldn't answer that offhand, Mr. Kennedy, without checking up.

The Chairman. The question primarily would be: Was he here on union business, if he was paid by union funds?

Mr. Hutcheson. If the bill was O.K.'d and paid by the [fol. 134] organization; yes, sir, Senator, he was.

Mr. Kennedy. What was he doing here in Washington on that day?

Mr. Hutcheson. I couldn't answer it without doing some checking up on it.

Mr. Kennedy. You were down here with him, were you not, at that time?

Mr. Hutcheson. I don't recall.

Mr. Kennedy. You were also here on the third and fourth, the record shows, and both of your bills were paid by the Carpenters.

Then there was the transportation down here to Washington. Could you tell us what it was that you were doing down here?

Mr. Hutcheson. I couldn't remember, Mr. Kennedy. I am in and out of Washington so often that I can't remember just what each trip is.

Mr. Kennedy. Then on September 10, Mr. Raddock flew out to Chicago, Ill. What was he doing out there, on September 10, 1957?

(The witness conferred with his counsel.)

Mr. Hutcheson. Upon advice of counsel, I refuse to answer on the same ground as previously related.

Mr. Kennedy. I am sorry.

But he was also out there on August 11, in Chicago, would you tell us what he was doing out there?

The Chairman. Was that paid for by the union?

Mr. Kennedy. The union paid charges of \$94.27 for that trip of Mr. Raddock to Chicago.

Mr. Hutcheson. On the advice of counsel I refuse to answer the question on the same grounds as previously related.

The Chairman. All right. The question is: Was he there on union business for which the union had the responsibility for payment?"

Mr. Hitz: Count 6, Your Honor.

3 The Witness: (Reading)

Mr. Hutcheson. On the advice of counsel I refuse to answer, sir.

The Chairman. The Chair, with the approval of the committee, orders and directs the witness to answer the question.

[fol. 135] (The witness conferred with his counsel.)

Mr. Hutcheson. I still refuse on the same grounds.

The Chairman. I asked you a moment ago if he was here in Washington on union business, the trip counsel interrogated you about, and you said if the union paid for it, yes, he was on union business.

Now we are asking you about the trip to Chicago, on the 11th of August, 1957. It appears from the records that the union paid his expense on that trip. Was he on union business at that time?

Mr. Hutcheson. On the advice of counsel I refuse to answer on the same ground.

The Chairman. The Chair, with the approval of the committee, orders and directs the witness to answer the question.

Mr. Hutcheson. I still refuse, sir.

The Chairman. Do we have the records of payments by the union?

Mr. Kennedy. Yes, we do.

The Chairman. Who can testify to this on the staff?

Mr. Kennedy. Mr. Tierney.

"TESTIMONY OF PAUL J. TIERNEY—Resumed."

Mr. Tuttle: This is not testimony by Mr. Hutcheson now. This is testimony by Mr. Tierney.

I assume that it is being offered merely for the purpose of showing the information that the committee had about that alleged trip to Chicago on the 11th of August, 1957.

Is that correct, Mr. Hitz?

Mr. Hitz: Well, I think it is being offered for all purposes that it may be relevant to in the case. I don't think it is restricted to any particular phase of the case.

Mr. Tuttle: Well, I will ask the Court to observe, as this very short extract is read, that it relates solely to a trip

to Chicago August 11, 1957, which is in the middle of the period when the grand jury in Lake County was considering the subject matter of a land transaction.

The Court: Well, it does relate to that time, apparently, but as to whether that is the only thing it relates to, I can't tell any more than you can.

[fol. 136] Mr. Tuttle: I understand, Your Honor. All I am—because it is a mere interjection in the middle of the testimony of Mr. Hutcheson on the subject of August 11, 1957, and the subject matter of what Mr. Tierney mentions has to do with that trip in view of his examination of the account at the hotel.

I don't think it's at all relevant or material in any way. I understand what we are interrogating here, or what we are trying here, is Mr. Hutcheson's testimony—not testimony given by Mr. Tierney. But I don't like to break the continuity if there is this understanding, that that is the continuity. If it isn't, I am going to object to it.

Mr. Hitz: Your Honor, it bears upon most facets of this case. For example, Count No. 6, reading from the

“Was he there in Chicago on union business for which the union had the responsibility for payment?”

Now, the time is August 11, as the context indicates, and as Mr. Tuttle so helpfully pointed out.

That is again as Mr. Tuttle pointed out, in the very middle of the period in which the prosecutor out there and his grand jury were considering the possibilities of an indictment for the substantive offense of bribing the Indiana officials.

And there is a refusal to answer, based in part upon lack of jurisdiction and lack of pertinency.

When that is made, as it was here, and Mr. Tierney is asked to identify documents with respect to that stay in that hotel in Chicago in that period—

The Court: He testified that the union paid for it, didn't he?

Mr. Hitz: That's right, and it is the most elaborate possible way to give to the witness one of the very things that he is seeking, namely, an explanation of pertinency so that he will have awareness of pertinency which is one of the

requirements of the Watkins case. It comes into every part of this case, including legislative purpose.

The Court: Well, I have got to recess now, I have got three Judges coming in my chambers right now, and I must recess until 1:45.

[fol. 137] (Thereupon, at 12:25 o'clock p.m., the Court recessed until 1:45 o'clock p.m.)

AFTER RECESS

(The Court reconvened at 1:45 o'clock p.m., pursuant to luncheon recess.)

Thereupon PAUL J. TIERNEY the witness at adjournment, resumed the stand, and was further examined and testified as follows:

Direct examination (resumed).

Mr. Hitz: Mr. Tierney, will you resume reading without omission, please?

The Witness: (Reading)

"The Chairman. Mr. Tierney, you have been previously sworn?

Mr. Tierney. Yes, sir.

The Chairman. Mr. Tierney, you may identify the document which the Chair hands you.

Mr. Tierney. This is a document furnished us by the United Brotherhood of Carpenters, Indianapolis, Ind.

The Chairman. Is that a document from their records?

Mr. Tierney. This is a document prepared by the general counsel of Carpenters, upon our request, and it shows Maxwell Raddock was issued an air travel card by the United Brotherhood of Carpenters, and this is a list of all the charges made against that air travel card for travel by Raddock from April 1956 through November 1957.

The Chairman. That document may be made exhibit No. 58.

(The document referred to was marked 'Exhibit No. 58' for reference and may be found in the files of the select committee.)

The Chairman. Does that document, furnished you by the general counsel from the Brotherhood of Carpenters, show that Mr. Maxwell C. Raddock submitted or received payment from the Brotherhood of Carpenters for the trip to Chicago on the date of August 11, 1957?

Mr. Tierney. It does. It shows that he was paid for a [fol. 138] round-trip passage between New York and Chicago on August 11, 1957.

The Chairman. May I inquire, now: Have you examined the hotel records there to ascertain who paid the hotel bill of Mr. Raddock on that trip?

Mr. Tierney. I have, Mr. Chairman.

The Chairman. Has the hotel record previously been made an exhibit?

Mr. Tierney. Yes, it has.

The Chairman. Exhibit No. 45, A & B.

I hand you this exhibit and ask you to examine it and state who paid the hotel bill for Mr. Raddock on that trip, and how much.

Mr. Tierney. The exhibit shows that the United Brotherhood of Carpenters and Joiners of America paid for Maxwell Raddock's stay at the Drake Hotel from August 11 through August 17, a total of \$147.10.

The Chairman. \$147 plus \$97 is what the records of the brotherhood and the hotel reflect was paid by the union for that trip?

That much at least?

Mr. Tierney. That's correct, sir.

TESTIMONY OF MAURICE HUTCHESON, ACCOMPANIED BY
HOWARD TRAVIS AND F. JOSEPH DONOHUE, COUNSEL—
Resumed.

The Chairman. The question is, Mr. Hutcheson: Were Mr. Raddock's expenses paid on that trip by union funds while he was on union business?

Mr. Hutcheson. On the advice of counsel I refuse to answer the question on the same grounds as previously related, sir.³

Mr. Hitz: Would you hold on for a moment?

That is Count 7, Your Honor.

• • • • •

The Court: What is that?

Mr. Tuttle: I say, the question as put down in the indictment as the content of Count 7 is a different question than the one which is now announced to be the question on which Count 7 is based. In the text of the printed proceedings [fol. 139] of the committee the question is:

"Were Mr. Raddock's expenses paid on that trip by union funds while he was on union business?"

And that is a different wording than the wording of the question set forth in Count 7.

I think it is my duty to call attention to that. I intended at the proper time to make a motion about it.

Mr. Hitz: What is the motion?

Mr. Tuttle: To dismiss the count.

The Court: Well, you said somewhat in the nature of an objection before we recessed for lunch, when the witness was asked for a statement as to the documents that had been submitted, that it was interjecting his testimony with that of Mr. Hutcheson, and was not Mr. Hutcheson.

As I recall the testimony of Mr. Hutcheson, he said he couldn't answer the question without checking as to whether the expenses of that trip had been paid by the union, or not.

And then Mr. Tierney was asked whether the documents on exhibit showed whether it had been paid by the union or not, and his answer was that it had been, the hotel bill and the railroad fare.

So I thought that that answer complemented the question that had been put to Mr. Hutcheson.

Mr. Tuttle: If your Honor please, it's my recollection, subject to check in the record, that the question which Mr. Hutcheson answered related to a different trip altogether at a different date, and the trip was one of September 3rd of 1957 through the 5th, at a stay at the Hotel Washington, and that would be in Washington.

The Court: Well, if there is some confusion about the time, Mr. Hitz, he is right. I don't know about that.

Mr. Tuttle: I was reading, Your Honor, from page 12122.

And Mr. Hutcheson said, as Your Honor correctly stated, that he could not tell of his own knowledge and would have to check.

But that was the trip to Washington in September, wasn't it?

Mr. Hitz: I think so.

[fol. 140] Mr. Tuttle: Which is a different thing from a trip to Chicago on August 11th, which was the subject of Mr. Tierney's testimony before the committee which has just been read.

Mr. Hitz: But this testimony of Mr. Tierney's before the committee is not being offered here in explanation of that earlier—of that trip in September which Mr. Tuttle has mentioned.

The testimony of Mr. Tierney is offered—

The Court: Well, Mr. Tierney came in to talk about the Chicago trip.

There is a confusion. Mr. Brantley has just pointed it out to me.

The witness Hutcheson refused to answer the question that had been asked to him about the trip to Chicago.

Mr. Tuttle: Yes, Your Honor, and—

The Court: And that is the one Mr. Tierney was telling us about.

Mr. Tuttle: Thereupon Mr. Tierney was put on the stand—

The Court: To tell us about the trip to Chicago expense.

Mr. Tuttle: What he ascertained on looking at the hotel records of that trip.

The Court: Yes, but Mr. Hutcheson refused to answer that question.

Mr. Hitz: That's right.

The Court: And then he got on with the trip to Washington.

Mr. Tuttle: I think the trip to Washington was referred to first.

Your Honor, further up on page 12,122.

The Court: Yes.

Mr. Tuttle: And so that trip, of course, was not in the circumference of the Lake County matter.

The Court: Well, how do you tell that Count 7 has to do with one of those, Mr. Hitz? It doesn't certainly say in 7 what it is talking about:

'Was Mr. Raddock paid on that trip the expenses paid by union funds while he was on union business?'

[fol. 141] Doesn't that refer to the Chicago trip?

Mr. Hitz: Yes, it does, and it refers to Count 6 at the bottom of page 12122.

The Court: Well, the Count 7—then the indictment question of 7 refers to the failure of Mr. Hutcheson to answer that question. Is that the point?

Mr. Hitz: Well, I think Mr. Tuttle's point is that there is a difference in the wording of Count 7 as contained in the indictment, and the text of the document we are reading.

I think that is the immediate point that he is raising.

The Court: Well, it is the immediate point, but I am trying to find out what trip he is talking about.

Are you both talking about Chicago?

Mr. Hitz: Yes, the Chicago, August 11th, trip.

The Court: There is a slight difference, it is not very much, between the statement in the question and answer business and the count.

Mr. Hitz: I think I can throw some light on that, Your Honor. If we turn to Government's Exhibit that bears the blue ribbon, which is Government No. 4, part of which is the committee report of citation to the full body of the Senate, and on page 25 thereof there appears the question, which is the Count 7 question, and the Count 7 question in the indictment is copied verbatim from the way it appears in the report of citation.

Now, there is a difference between the wording in no material way at all, in the way it is produced in the reported citation, although it purports to be testimony, and the way it appears in Document No. 31 from which we were reading.

In other words, the indictment as drawn conforms to the report of citation, and there is a slight difference between it and what we have just read from the document. But it is of no consequence.

Mr. Tuttle: Well, I disagree on whether it is of consequence or not.

Where there is an indictment and the indictment charges that there was a refusal to answer a question in a given [fol. 142] form and a given wording, the question before us is whether or not the printed book, which you marked in

evidence for identification as a correct reproduction of the proceedings before the committee, supports the quotation that you make in the indictment here, and not whether somewhere else outside of the indictment and outside of this printed book there is a piece of paper which reproduces what you have in the indictment.

The Court: Well, certainly the variance is hardly anything to talk about. It reads, one of them:

"Were Mr. Raddock's expenses paid on that trip by union funds while he was on union business?"

Mr. Tuttle: Yes.

The Court: And the indictment question is:

"Was Mr. Raddock paid on that trip, the expenses of his, paid by union funds while he was on union business?"

Now, if anybody can see any substantial difference there, anything that matters, I am curious to know what it is.

Mr. Tuttle: Well, Your Honor, all I can say is that this question as it is framed in the indictment is that,

"Was Mr. Raddock paid on that trip the expenses of his paid by union funds while he was on union business?"

The Court: Yes, that is the way it reads.

Mr. Tuttle: And that could imply that—it seemed to me, respectfully—that he could be deemed by this question in the indictment to have been paid while on the trip while on union business. In other words, whether or not there was some compensation paid to him in addition to his expenses.

And so I felt that it was my duty to call attention to a variance and to the fact that I think there is considerable significance in the variance.

The Court: And now the other one reads—I think you will concede this if you will look at it—

"Were Mr. Raddock's expenses paid on that trip by union funds while he was on union business?"

Mr. Tuttle: Oh, I concede that, Your Honor. That is [fol. 143] the way it is in the printed book which Mr. Tierney was just reading from. He just read that answer from the printed book.

The Court: Now, what is the difference that makes any difference there between that and the indictment question?

Mr. Tuttle: Well, only, I have to submit, that it seemed to me that it would be—it will be for Your Honor to consider, but it seemed to me that the language in the indictment itself has a double meaning;

“Was Mr. Raddock paid on that trip, comma, the expenses of his paid by union funds while he was on union business?”

And that implied to me that he was being asked there, according to the question in the indictment, whether on union business Raddock received payment for making the trip, it being claimed that he was in some way serving for which he would be entitled to payment, and his expenses were paid. In other words, that it involved two subject matters instead of one.

The Court: I don't see it. I don't see it.

I think it is a little on the absurd side.

Mr. Tuttle: I feel it my duty, Your Honor, as counsel in this case, to call it to Your Honor's attention.

The Court: All right, you have done it.

By Mr. Hitz:

Q. Now, Mr. Tierney, you finished reading the Count 7 question and stopped there at my interruption; is that right?

A. Yes, sir.

Q. Will you continue to read without omission:

A. (Reading):

“Mr. Hutcheson. On the advice of counsel I refuse to answer the question on the same grounds as previously related, sir.

The Chairman. The Chair orders and directs the witness to answer the question, with the approval of the committee.

Mr. Hutcheson. I still refuse, sir.

The Chairman. All right; proceed, Mr. Kennedy.

Mr. Kennedy. You were out in Chicago at the same time, were you not, with Mr. Raddock?

Mr. Hutcheson. On advice of counsel I refuse to answer."

Mr. Hitz: Count 8, Your Honor.

[fol. 144] "Mr. Kennedy. You were out in Chicago at the same time?"

Mr. Hutcheson. On the advice of counsel, I refuse to answer on the same grounds.

The Chairman. The Chair orders and directs the witness to answer the question, with the approval of the committee.

Mr. Hutcheson. I still refuse, sir.

Mr. Kennedy. The records, Mr. Chairman, indicate that Mr. Hutcheson was present at the same time.

The Chairman. Were your expenses on that Chicago trip paid by the union?"

Mr. Hitz: Count 9, Your Honor.

"(The witness conferred with his counsel.)

Mr. Hutcheson. On the advice of counsel I refuse to answer on the same ground as previously related.

The Chairman. You are ordered and directed to answer the question, with the approval of the committee.

Mr. Hutcheson. I still refuse, sir.

The Chairman. Again with respect to these questions that have been put to you, we are to understand you are not invoking the fifth amendment privilege?

(The witness conferred with his counsel.)

Mr. Hutcheson. Yes, sir; I am declining on the grounds previously stated.

The Chairman. And not invoking the fifth amendment privilege?

Mr. Hutcheson. Yes, sir.

The Chairman. Yes or no? Are you or not? Yes or no?

Mr. Hutcheson. No, I am not.

The Chairman. Thank you.

Senator Ervin. Mr. Chairman, may I ask one or two questions along that line and then I will subside?

Mr. Hutcheson, you are familiar with the provisions of

the AFL-CIO ethical code concerning officers of affiliated unions who invoke the fifth amendment; aren't you?
[fol. 145] Mr. Hutcheson. Yes, sir.

Senator Ervin. In that connection, I would like to state that this is my opinion of the law, though it may not be your counsel's. The only reason for recognizing the right that a man may not testify concerning matters involved in an indictment against him arises out of the fact that the indictment is probably the strongest kind of evidence that anything he may say in reference to it may be construed to incriminate him, and that the only reason that a man has a right to refrain from answering matters about an indictment is the fact that what he may say about those matters may tend to incriminate him.

Therefore, Mr. Hutcheson, don't you realize that what you are doing is that you are seeking to avoid an expressed violation? In other words, you are seeking to get the benefit of the fifth amendment without invoking it so that you will not run the risk of committing an offense against the ethical code of the A. F. L. - CIO?

— (The witness conferred with his counsel.)

Mr. Hutcheson. Sir, I have been following the advice of counsel on the grounds outlined by me.

Senator Ervin. Well, you are concerned that there shall be no actual or apparent violation on your part of the provisions of the A. F. L. - CIO code of ethics concerning union officers who invoke the fifth amendment when asked about their official conduct, aren't you?

Mr. Hutcheson. Yes, sir.

Senator Ervin. That is all.

The Chairman. One other question on the Chicago matter.

Were you out in Chicago at that time on union business?"

Mr. Hitz: Count 10.

The Court: Yes.

“(The witness conferred with his counsel.)

Mr. Hutcheson. On the advice of counsel, I refuse to answer on the same grounds as previously related.

The Chairman. The Chair, with the approval of the com-

mittee, orders and directs the witness to answer the question.

[fol. 146] Mr. Hutcheson. I still refuse, sir.

The Chairman. Proceed.

Mr. Kennedy. Do you know Mr. James Hoffa?"

Mr. Hitz: Count 11.

"Mr. Hutcheson. On the advice of counsel, I refuse to answer on the same ground as previously related.

The Chairman. The Chair orders and directs the witness to answer the question, with the approval of the committee.

Mr. Hutcheson. I still refuse, sir.

The Chairman. Proceed.

Mr. Kennedy. That is, you refuse to tell the committee as to whether you know Mr. James Hoffa?

(The witness conferred with his counsel.)

Mr. Hutcheson. Yes, sir.

Mr. Kennedy. Did you make an arrangement with Mr. Hoffa that he was to perform tasks for you in return for your support on the question of his being ousted from the A. F. L. - CIO?"

Mr. Hitz: Count 12.

"Mr. Hutcheson. On the advice of counsel I refuse to answer on the same grounds as previously related.

The Chairman. The Chair, with the approval of the committee, orders and directs the witness to answer the question.

Mr. Hutcheson. I still refuse, sir.

The Chairman. Proceed.

Mr. Kennedy. Isn't it a fact that you telephoned Mr. Hoffa from your hotel in Chicago on August 12, 1957?"

Mr. Hitz: Count 13.

The Court: Yes.

"Mr. Hutcheson. On the advice of counsel, I refuse to answer, sir, on the same grounds.

The Chairman. The Chair, with the approval of the committee, orders and directs the witness to answer the question.

Mr. Hutcheson. I still refuse.

[fol. 147] The Chairman. Again the record should clearly show we are interrogating the witness about union affairs.

Mr. Kennedy. And wasn't that telephone call in fact paid out of union funds, the telephone call that you made to him on August 12?"

Mr. Hitz: Count 14.

The Court: Yes.

"Mr. Hutcheson. On the advice of counsel I refuse to answer on the same grounds as previously related.

The Chairman. The Chair with the approval of the committee orders and directs the witness to answer the question.

Mr. Hutcheson. I still refuse, sir.

Mr. Kennedy. Do you also know Mr. Sawochka, of the Brotherhood of Teamsters?"

Mr. Hitz: Count 15.

The Court: Yes.

"(The witness conferred with his counsel.)

Mr. Hutcheson. On the advice of counsel, I refuse to answer on the same grounds as previously related.

The Chairman. The Chair, with the approval of the committee, orders and directs the witness to answer the question.

Mr. Hutcheson. I still refuse, sir.

Mr. Kennedy. Isn't it a fact that you had Mr. Plymate, who is a representative of the Brotherhood, telephone, and your secretary telephone, Mr. Sawochka from your room on August 13, 1957?"

Mr. Hitz: Count 16.

The Court: Yes.

"Mr. Hutcheson. On the advice of counsel I refuse to answer on the same grounds previously related.

The Chairman. The Chair, with the approval of the committee, orders and directs the witness to answer the question.

Mr. Hutcheson. I still refuse, sir.

Mr. Kennedy. And isn't it a fact that that telephone bill and that telephone call was paid out of union funds?"

[fol. 148] **Mr. Hitz:** Count 17, Your Honor.

The Court: Yes.

"Mr. Hutcheson. On the advice of counsel I refuse to answer on the same grounds.

The Chairman. The Chair with the approval of the committee, orders and directs the witness to answer the question.

Mr. Hutcheson. I still refuse, sir.

Mr. Kennedy. Were you here at the Hotel Washington in September of 1957?

Did you stay at the Hotel Washington?

Mr. Hutcheson. Well, I don't recall the trip. I probably was, if the hotel bill shows it.

Mr. Kennedy. Going on to October 13 and 14 of 1957, were you here at the Hotel Washington at that time?

Mr. Hutcheson. Well, I don't recall right now.

The Chairman. I hand you here a hotel bill made out to M. A. Hutcheson, running from October 13 to October 15, 1957. I present it to you for your inspection and identification.

(The document was handed to the witness.)

(The witness conferred with his counsel.)

Mr. Kennedy. What is the answer?

Mr. Hutcheson. It is registered to me, Mr. Kennedy.

Mr. Kennedy. What were you doing down here at that time?

Mr. Hutcheson. I couldn't answer that.

Mr. Kennedy. I see.

The Chairman. That may be made exhibit No. 59.

(The document referred to was marked 'Exhibit No. 59' for reference and may be found in the files of the select committee.)

Mr. Kennedy. On October 14, Mr. Raddock joined you at the Hotel Washington. Why did he come down to Washington?

Mr. Hutcheson. I don't recall.

Mr. Kennedy. That wasn't very terribly long ago. What were you doing down here at that time?

[fol. 149] Mr. Hutcheson. Well, Mr. Kennedy, I must have been attending some meetings of some kind, but I do not recollect just offhand what they were.

Mr. Kennedy. You and he were occupying the same room. You don't remember what you were doing here?

Mr. Hutcheson. No, sir, I do not.

Mr. Kennedy. He made a number of telephone calls. His bill was paid out of union funds. The first telephone call he made on October 14, 1957, was to Gary, Ind.

(The witness conferred with his counsel.)

Mr. Kennedy. Would you tell us what he was doing at union expense calling Gary, Ind.?

Mr. Hutcheson. I know nothing about the telephone call, sir.

Mr. Kennedy. It was to Local 142 in Gary, Ind. What was that for?

Mr. Hutcheson. I wouldn't know.

Mr. Kennedy. You have no idea?

Mr. Hutcheson. No, sir.

Mr. Kennedy. You have no idea why he should be calling local 142 of the Teamsters in Gary, Ind.?

Mr. Hutcheson. No, sir.

Mr. Kennedy. Did you have any business with local 142 of the Teamsters in Gary, Ind.?"

Mr. Hitz: Count 18.

The Court: Yes.

"Mr. Hutcheson. On the advice of counsel I refuse to answer on the same grounds as previously stated.

The Chairman. The Chair, with the approval of the committee, orders and directs the witness to answer the question.

Mr. Hutcheson. I still refuse, sir.

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Mr. Hitz: • • • There then appears on page 12131 the testimony of Harold Ranstad—R-a-n-s-t-a-d (spelling.) We [fol. 150] are not interested in his testimony, but we think that there should be included in this record the statement

of the Chairman beginning some seven lines down on page 12132 and going from there to the end of 12133, which concludes the testimony contained in this volume.

The Court: Mr. Tuttle, have you any serious objection to those parts?

Mr. Tuttle: I concur in the omission of everything, including the top eight lines on page 12132.

Now, Mr. Hitz refers to a closing statement which he would like to read.

The Court: Yes.

Mr. Tuttle: Just one second, Your Honor, while I confer.

The Court: All right.

Mr. Tuttle: The opening words are:

"The Chairman. The chairman will issue the following statement."

I assume it is a statement that was issued publicly; in fact, I know it is because I read it at the time in the newspapers.

Do you agree to that?

Mr. Hitz: I don't know.

Mr. Tuttle: Well, I will make that statement and ask Mr. Tierney if it is not right.

The Witness: It's a statement that was made at the hearing which was a public statement and the press was present at the hearing, so it would be a public statement as are all proceedings.

Mr. Tuttle: That's all I wanted.

Thank you.

By Mr. Hitz:

Q. Will you now read on page 12132, beginning, "The Chairman," seven lines, about, down from the top:

A. (Reading):

"The Chairman. The chairman will issue the following statement:

It appears that at the very least, Mr. Hutcheson, as president of the United Brotherhood of Carpenters and Joiners was grossly careless with the use of union funds and com-

pletely failed to meet the responsibility of his trust. That [fol. 151] such an excessive amount of money should have been paid for the printing and writing of the book on his father is almost inconceivable.

O. William Blaiier and Frank Chapman, as well as other top officers of the Carpenters Union, bear responsibility with Hutcheson in the handling of this matter, which obviously cost the Carpenters some \$185,000 in excess of value received.

Mr. Raddock perpetrated a fraud against this union. From the facts developed, it is apparent that only a small number of the books on William Hutcheson would likely have ever been printed if it had not been for the investigation this committee has conducted.

The facts that lead to this conclusion are:

1. That Mr. Raddock had already spent almost all of the money that the Carpenters had paid him in financing his other business and projects and paying off his debts.

2. That he had to borrow money in order to pay for the books that were finally published in January and February 1958.

3. He predated certain letters in order to make it appear that he was, in fact, intending to publish the book prior to the start of this investigation.

Mr. Raddock was involved in other frauds; in the operation of his newspaper; in claims by his solicitors; in the sale and purchase of World Wide Press bonds. That so much of this should have been financed by union funds is extremely unfortunate.

The testimony further indicates that certain high officials of both the Teamsters and the Carpenters Unions, two of the largest unions in the country, with the help and assistance of Mr. Raddock were involved in a conspiracy to subvert justice in the State of Indiana.

All the facts regarding this conspiracy undoubtedly have not been developed by the committee.

Further exposure we believe can and should be made. We will be glad to assist and help law enforcement officials

in the State of Indiana if they determine that they would interest themselves in the matter.

[fol. 152] It is also my hope that the Carpenters Union itself will take whatever action it is possible for it to take to recover the moneys now in the possession of the heirs of Mr. Hutcheson which would appear to rightfully belong to the international brotherhood.

The Chair would also like to express the appreciation of the committee for the fine work done by the staff of the committee, under the competent direction of our chief counsel, Mr. Robert Kennedy."

Mr. Hitz: Now you may stop there a minute.

Will you continue on, without omission, please?

The Witness: (Reading):

"These members of the staff include: Karl Deibel, Charles Mattox, Charles Wolfe, John Prinos, Frank Ward, Maurize Frame, Andrew Masyko, Richard Sinclair, Harold Ranstad, Robert Dunne, and Paul Tierney.

The committee thanks each of them for the fine work they have done.

Mr. Travis. Do I understand Mr. Hutcheson to be released from his subpoena?

Mr. Kennedy. Yes. Does he want to make any statement?

Mr. Travis. I believe not.

Mr. Kennedy. Mr. Chairman, that is all.

Mr. Hitz: That will be all.

Was Mr. Hutcheson present at the conclusion of this hearing as you have just read it?

The Witness: It is my recollection that he was.

Mr. Hitz: Your Honor, that is the end of this hearing, the end of the testimony in the volume, and it is the end of the reading on this subject.

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Thursday, April 7, 1960

OFFERS IN EVIDENCE AND COLLOQUY IN
CONNECTION THEREWITH

Mr. Hitz: There are two items of evidence and they consist of Mr. Katz' testimony that was undertaken by the [fol. 153] committee immediately after Mr. Travis for Mr. Hutcheson had become ill, and Mr. Kennedy said, "Well, I can call Mr. Katz to fill in the time gap, so to speak."

And Mr. Katz testified on some things that are quite important in the Holovachka matter. He admits he is the go-between who actually took the money to Holovachka which, in the framework of the sparse evidence that the committee had, made it appear that Holovachka was the recipient of funds having to do with the non-indictment of Mr. Hutcheson.

I say that's a framework from which inferences were drawn, they were drawn by the committee, and the committee sought to fill in those gaps, and we have a complete refusal to answer those questions on behalf of all of the participants, including Mr. Hutcheson.

In any event that was Mr. Katz' testimony.

That is as important as any item of evidence showing the matter into which the committee was investigating.

In addition, Mr. Sinclair, whose testimony likewise is interspersed into the testimony of Mr. Hutcheson as a physical matter in this transcript, gave testimony likewise bearing on the precise question under investigation at the time.

So I informed Mr. Tuttle that I would forego the other types of offers that I have just mentioned to him and to you yesterday, and I mentioned this morning, but that I would like to pursue the offer of Katz' and Sinclair's testimony.

Mr. Tuttle said he would consider overnight what his position would be.

I do offer the testimony of those two individuals. I think in view of the fact that the case has taken so long and that we feel that there is such a strong case presented here, that we could forego the reading of the testimony of those two

witnesses, but we do want it to be in the record, and I make the offer.

Mr. Tuttle: Your Honor, of course, that adjective "strong" is something that presents a point at which I cannot agree with Mr. Hitz, but otherwise I am going to agree with his suggestion of yesterday that, as I understood it—and if I don't state it rightly he will correct me—I understand [fol. 154] stood him to say that it would be unnecessary to read now the testimony of Mr. Katz and Mr. Sinclair but that he would like to have it in as part of the record so that if ever there came occasion to refer to it, he could.

I, too, share the desire to shorten matters. I regard that testimony as immaterial and irrelevant but that is something I needn't press until and unless he refers to it.

The Court: Yes.

Mr. Tuttle: So if I could reserve the right to put in objection, other than, of course, to what he has is a correct reproduction of what is in the record, I am going to concede that—why, otherwise, to preserve legal—the legal objections that could be made—I will concur in what Mr. Hitz has stated.

The Court: Well, that seems to deal with the situation then.

As I understand it, it is agreed that subject to your objection, if the matter is dealt with by referring to it or reading it, rather, that you will then note your objection to it, so that the record will be complete on the matter.

Mr. Tuttle: Thank you, Your Honor.

The Court: But that, of course, I am not bound by the objection.

Mr. Tuttle: Oh, no.

The Court: I will have a right to rule on it.

And as I take it, that is the situation with respect to several of the objections that are made.

Mr. Tuttle: Yes, Your Honor.

Mr. Hitz: But it was my understanding, as best I can interpret Mr. Tuttle's last remarks, he had no objection to the introduction of the testimony of those two individuals but he reserved the right to make unfavorable comments about them if I should make comments about them.

Isn't that the status of your remarks?

Mr. Tuttle: I don't know about the word "unfavorable." All I meant is that if you make comment about them, I would have the same right to object to the legal force of [fol. 155] your comment on the ground that the subject matter to which you are referring is immaterial and irrelevant, that is all.

Mr. Hitz: But I thought nevertheless he doesn't object to their being admitted in evidence.

Mr. Tuttle: Oh, that is what I have already said. I said we regard it as read here and I am not undertaking to challenge the correctness of the content of the testimony as the proof appears in the book.

The Court: It is a little confusing to me as to the nature of the objection, but I think I understand it.

He is not objecting to my hearing what you have to say. He is objecting to the force of the argument that you may make, and he reserves to himself the right to make a counter argument.

Mr. Hitz: Oh, yes, of course.

Mr. Tuttle: Precisely.

The Court: That's about what you mean, isn't it?

Mr. Tuttle: That's it precisely, sir.

Mr. Hitz: But still the evidence goes in without objection as a practical proposition.

Mr. Tuttle: The evidence goes in at this point without objection except I want to have the privilege of saying at some time or other that that testimony does not contribute to anything that should be part of the decision.

The Court: Yes.

Mr. Hitz: Well, I anticipate that, all right.

The Court: Yes.

Mr. Hitz: Next, Your Honor, I believe that it has been demonstrated that the testimony that was taken by the committee, both from Mr. Hutcheson and others with respect to the payment to Mr. Raddock of the sum that has been commented on here for the writing and publication and distribution of the book about Mr. Hutcheson, Sr., is relevant to the matter here under inquiry in this case.

I am sure that Your Honor feels that way, and I would like now to suggest that the earlier part of Mr. Raddock's [fol. 156] testimony bearing on the same subject likewise be

admitted in evidence here, and I will say again I will not read it, but I think it should be in the record of the case for future use if it should be desired by either side.

Mr. Hitz: Well, I already agreed that I won't read Mr. Raddock's book testimony to the record or to you, and I am very close to agreeing that I won't argue anything to you from that, but I still would like to have it if the Court will permit it as a matter of record in the case for any possible future reference.

So I don't think I am cluttering the record with it, and that to the extent it is cumulative it certainly can't do any harm to the trial of the case since I won't read it to you and may not even refer to it.

Mr. Tuttle: Well, if Your Honor please, I don't want to prolong this, of course.

The Court: Well, don't do it, then, please.

Mr. Tuttle: I won't. I will only say this, that there is a certain amount of extra burden thrown on the Court and on counsel by piling up cumulative matter that to a very large extent, and particularly, as he says, that he is inclined to believe that he will not even refer to it.

But nevertheless it is something that would have to be considered some time or other by counsel as well as by the Court, he should refer to it.

I hope, therefore, that we can be spared making this record any longer than it is.

The Court: Well, I have already begged him to do that, and apparently he has given some consideration to it, but not too much, and if we can concede a little something to him to get along with the thing, let's do it.

Mr. Tuttle: Well, if Your Honor please, what I would do in that case, if Your Honor wishes to concede, as you say, I would make the same reservations of my right at the time and place.

The Court: I grant you those rights.

Mr. Tuttle: As I did in the case of Katz and Sinclair.

{fol. 157] The Court: Yes. I grant you those rights. If the matter comes up, you can discuss them fully and argue against the effectiveness of it.

Mr. Tuttle: One of my associates feels that when I said "same objections" I might have been a little vague. My objections were as to relevancy and materiality, that I was reserving. I used those words in connection with the Katz testimony and I am sure they applied in what I said as to this.

The Court: All right.

By Mr. Hitz:

Q. Mr. Tierney, do you know where Mr. Raddock lived in the summer of 1958?

A. Yes, sir.

Q. Where?

A. In Mamaroneck, New York.

Q. And in 1957?

A. I believe he lived in Mamaroneck, New York, then. He did.

By Mr. Hitz:

Q. The name of Mr. Raddock's business?

A. There were two principal ones, as a matter of fact, three:

World-Wide Press Syndicate, Inc.;

Trade Union Courier; and

The American Institute of Social Science.

Q. Where were those businesses located?

A. World-Wide Press was located in Yonkers, New York, and the American Institute of Social Science, and the Trade Union Courier had offices in New York City.

Mr. Hitz: Your Honor, I now would like to offer in evidence as Government's 6, a Government publication entitled, "The Second Interim Report, Part 2," of this select Senate committee.

The Court: Would that be Government's Exhibit No. 6?

The Clerk: Yes.

Mr. Hitz: The Clerk has marked it "6" for identification.

(Thereupon, Second Interim Report, Part 2, of Select Senate Committee was marked Government Exhibit No. 6 for identification.)

[fol. 158] Mr. Hitz: This is a report which is in the nature of a final report from this committee. It is part of the several reports that comprise the final report of the committee, and in it there are two passages which make important references to the particular investigation that we are concerned with here.

It is, of course, a report from the committee to the legislative body.

For that reason, it bespeaks strongly the continuing and final legislative purpose had by this committee in this investigation, and it documents that.

I offer No. 6 in evidence.

Do you have a copy, Mr. Tuttle?

Mr. Tuttle: Do you mean you offer the whole of this in evidence?

Mr. Hitz: I offer the entire document in evidence, with particular reference to certain parts of it.

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Mr. Tuttle: * * * It seems to me that if Mr. Hitz is going to claim that any portion of this, which was made on October 25, 1959, a year after the events of June 26 and June 27, has any relevancy, he should point out what he is referring to, because otherwise I will never be able to know what is really going to be referred to some time later by him.

Mr. Hitz: Those two portions are entitled, "Maxwell C. Raddock and the United Brotherhood of Carpenters and Joiners of America," page 517.

The second item in the book, "Findings, Maxwell C. Raddock and the United Brotherhood of Carpenters and Joiners of America," page 590.

Those are the parts that apply to this case that we have in the investigation and led to it.

The other parts I quite agree with Mr. Tuttle do not bear upon this matter, but I think that the fact that what I have contended bear upon this case, the fact that they are

contained in this report to the body, I think makes the whole volume admissible.

[fol. 159] The Court: That is what I have a little difficulty in following, Mr. Hitz.

Mr. Hitz: In that case I will offer the two items.

The Court: Well, I think the two items, from what you say, are relevant and should be admitted, and you have identified them.

Mr. Hitz: But may the whole volume go in so I don't have to tear the thing apart?

The Court: I don't think you have to tear it apart but I think you have to identify that which you have offered.

Mr. Hitz: Thank you. Your ruling has covered my offer.

The Court: I think so.

Mr. Tuttle: Your Honor, might I just have a moment?

The Court: You can have more than a moment. I will take that recess we were talking about.

(Short recess had:)

Mr. Hitz: Your Honor, during the recess—

Mr. Tuttle: Excuse me for interrupting.

Mr. Hitz: Yes, sir.

Mr. Tuttle: I understood Your Honor to decide to take in from that book that has just been marked Government's Exhibit No. 6, the portions referred to in the index.

I would just want to enter my objection that it is immaterial and irrelevant and contains nothing that could appropriately contribute to the decision in this case.

The Court: Well, I thought certain elements that he read from the index were apparently appropriate.

Mr. Tuttle: Well, I understood, Your Honor, and I am referring to those portions.

The Court: Yes.

Mr. Tuttle: I am just saying that from my point of view—

The Court: You object to them?

Mr. Tuttle: Yes, sir, on the grounds stated.

The Court: I will note that.

[fol. 160] (Thereupon portions of Second Interim Report Part 2, of Select Senate Committee, entitled "Maxwell C.

Raddock and the United Brotherhood of Carpenters and Joiners of America," beginning at page 517, and

Second item, "Findings, Maxwell C. Raddock and the United Brotherhood of Carpenters and Joiners of America, beginning at page 590; were received in evidence.)

Mr. Tuttle: We are back where five minutes ago I offered to concede.

I understand Mr. Hitz wants to prove on the hearsay basis that the witness is told that the official transcript, the stenographic transcript as officially taken, contains the question in the wording that appears in Count 7 and that the inaccuracy, consequently, is in the reproduction in the printed book.

The Court: That's what I understand now.

Mr. Tuttle: Yes.

Mr. Hitz: Being part 31.

Mr. Tuttle: Yes.

Mr. Hitz: That's exactly what we want to show.

Mr. Tuttle: All right, I'm not going to dispute it.

The Court: All right, fine.

Now, does that mean that the transcript, as corrected, or as it was submitted and should be corrected, accords with the wording of the indictment in Count 7?

Mr. Hitz: It does.

The Court: Is that what it means?

Mr. Hitz: Yes, that's what it means.

The Court: Do you understand that now?

Mr. Tuttle: Yes, I understand that the official transcript accords with the wording in Count 7, and that the mistake is due to the error in the green book.

[fol. 161]

April 11, 1960

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Thereupon, HON. JOHN L. McCLELLAN called as a witness and, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Hitz:

Q. Give your full name, please, sir.

A. John L. McClellan.

Q. You are one of the United States Senators, from the State of Arkansas, is that correct, sir?

A. Yes, sir.

Q. And you were in 1958?

A. Yes, sir.

Q. Senator McClellan, you now are the Chairman of the Select Committee on Improper Activities in the Labor or Management Field, isn't that right?

A. I was Chairman of it during the lifetime of the Committee.

Q. Just a few days ago, did it cease its existence?

A. The life of the Committee expired on the 31st of March of this year.

Q. You were its Chairman in June of 1958, were you not, sir?

A. I was.

Q. Do you recall the time in June 1958, when Mr. Maurice A. Hutcheson, the defendant here and who is seated in the middle on the other side of counsel table, appeared before your Committee?

A. Yes. I was Chairman at that time and I recall having Mr. Hutcheson before the Committee.

.

By Mr. Hitz:

Q. Senator McClellan, when you made the statement which I have last referred to, "Further exposure we believe can and should be made" and then the next sentence to

the effect that you would cooperate with the Indiana authorities, did you, as Chairman of this Committee, have an intent to encourage or assist the State of Indiana to investigate and uncover a conspiracy to bribe in the matter of Mr. Hutcheson's indictment and the circumstances surrounding its no-bill in the County of Lake County?

Mr. Tuttle: Your Honor, my objection is renewed. This is simply an indirect way of asking the witness to state what his personal or official intent was at that time, an intent which must be judged by the language, must be judged in the same way the public or the defendant would judge it from what was issued to the public and that cannot be varied.

In addition, I am saying that the authorities all hold that legislative intent or legislative purpose must be judged not by any private mind that somebody may have but by the authority given to the Commission or Committee by the statement of background and information which the Committee itself used and by the nature of the questions which were put to the witness. Otherwise, the defendant is in a hopeless position.

The Court: I agree with you on that last statement. There is no doubt about it but I still think he can answer the question as to whether he intended to reveal a crime that was committed by this man and that was his purpose. I don't see any harm in that.

I will let him answer it anyway and you can argue in the Court of Appeals.

Mr. Tuttle: Your Honor, I hope that I will not have to argue in the Court of Appeals.

The Court: I think you will, from what you have said.

Mr. Tuttle: I have said nothing about taking an appeal. The other side has said that.

The Court: No, but from what you have said it looks like that is where you are going.

Mr. Tuttle: I feel as if I have to make, as my professional duty, objections.

The Court: Go ahead and do it.

By Mr. Hitz:

Q. Do you have my question in mind, Senator McClellan?

A. I believe you had better repeat it. I think I do have.

The Court: Yes.

[Vol. 163] By Mr. Hitz:

Q. As Chairman of this Committee, did you have any intention when you said, what I have read several times and I am sure both sides know what it is and it is in the record, did you have any intention of encouraging or assisting the State of Indiana in conducting a further investigation of this matter looking towards a state prosecution?

Mr. Tuttle: The same objections, Your Honor, and also as to the form of the question. It contains, in my judgment, all kinds of conclusory language and predicates.

The Court: Yes. I understood it and ruled on it.

You may answer.

The Witness: This was the conclusion of the hearings in this particular investigation. At the conclusion, I made this brief statement that is in the record.

Our legislative function had been performed in seeking information regarding crimes and improper activities. Some evidence had been presented indicating the possibility of a further crime involving this defendant possibly and officers of another large union. It has been our practice to cooperate with state and federal officials where any evidence is developed before us with respect to a crime having been committed. Our legislative purpose is to search out and find if crime has been committed.

My statement here is to the effect that if the state officials desired to pursue any testimony that we had developed, we would cooperate with them and make the record available to them.

Mr. Hitz: Thank you.

No further questions, You Honor.

The Court: I do not think he has clarified it a bit but go ahead.

Mr. Tuttle: I have no questions, Your Honor.

The Court: All right.

Mr. Hitz: Thank you, Senator McClellan

The Court: If there is no objection, the Senator will be excused.

Mr. Tuttle: If I may just speak to my associate. My associate is trying to say something.

The Court: Yes.

[fol. 164] Mr. Tuttle: I have no questions.

The Court: Very well.

(Witness excused.)

Mr. Hitz: The Government rests, Your Honor.

The Court: All right.

MOTION TO STRIKE CERTAIN TESTIMONY AND RULING THEREON

Mr. Tuttle: If Your Honor please, at the conclusion of the Government's case, I would like to move to strike out certain portions of the record of the second interim report of October 23, 1959.

Mr. Hitz: Just a moment, if Your Honor please, until I find what he is referring to.

The Court: He wants to strike out that second volume, I think.

Mr. Tuttle: So much of the second interim report which has been received to that extent of Government's Exhibit 6 for identification as relates to all matters other than those on 554 which refers to the supposed conspiracy to forestall indictments because of the land matter.

Mr. Hitz: What page is that on?

Mr. Tuttle: It begins at page 554 and runs, I believe, to page 561 and also that portion of the Findings beginning on page 590 that relate to matters other than the matter of the land matter in Indiana.

I am not moving to strike out the Findings beginning on page 590 to 592 but I cannot see that the other matters have any relevancy to this at all and that is the ground of my motion. I did not have a chance at the time, when you were offering it, to examine Part 2 closely but I do now. If I am not right in the matter of the beginning and end-

ing of a page on the subject matter to which I have alluded, of course I can be corrected on that.

Mr. Hitz: Your Honor, our position is that we are entitled to have in our record and it should be in the record all of the report that the Committee saw fit to make to the full body of the Senate which it had under the heading "Maxwell C. Raddock" and the "United Brotherhood of Carpenters and Joiners of America" for the reason that even though some of the matters might not concern this particular Holovachka incident and the use and misuse of [fol. 165] funds of the Carpenters Union having to do with the book of Hutcheson, Sr., and with the Teamsters Funds which apparently were transmitted in one fashion or another to Holovachka, the Lake County prosecutor, for the reason that Mr. Raddock goes as a thread throughout the entire transaction that was apparently being reported here by this Committee to the Senate and the heading, to repeat again, Maxwell C. Raddock and the United Brotherhood of Carpenters and Joiners of America. It is more or less, to say it briefly, a matter of continuity and context that causes us to offer the entire report.

I think that some of it does not have any direct connection with this case. I still think it should be in. If the Court disagrees with me on the principle in which it was offered in its entirety, then I will endeavor to come down to pages with Mr. Tuttle and agree as to those pages which do fall within that area where their value is largely a matter of context because Mr. Raddock runs throughout it.

Mr. Tuttle: Your Honor, very briefly, this report is a year and a half after Mr. Hutcheson's testimony. I objected to it at the time and to all of it on the ground that some statements a year and a half later would not be relevant as to whether or not there was criminal conduct in the position taken by Mr. Hutcheson and his counsel at the hearings.

Furthermore, I cannot agree with the thought that, because of some continuity, whatever that may mean, that there is relevancy. Mr. Hutcheson is here on trial because he did not answer certain questions.

The Court: That is right.

Mr. Tuttle: And on that alone and those questions concerned a subject matter which was stated in various ways but which were the subject of interrogation by the Committee on June 26 and June 27, they announced that that, on that day, as Your Honor will remember, they would take up this subject of the land matter and the matter of indictments and that closed on June 27.

Now, what was before that did not in any way affect or relate to that question or that subject matter of inquiry on June 26 and 27. In this report, at a certain place, they undertook to summarize the testimony given on that sub-[fol. 166] ject on June 26 and on June 27 and then they closed with that and then went on to other matters.

My feeling is, and I respectfully submit that Mr. Hutcheson cannot be affected by any such ex post facto statements a year and a half later.

I made my motion as to all the other matters except the matters that were investigated on June 26 and on June 27 and if I haven't stated the pages right, I will cooperate with Mr. Hitz in designating the exact pages so that we will know to what portion my present motion is not directed.

Mr. Hitz: We still think the entire report on this Rad-dock and Carpenters Union matter is admissible in evidence, Your Honor. If Your Honor disagrees and wants us to separate out those which perhaps only have fringe relevancy, we will do that but we still offer the entire document. In fact, it has been offered and received and we would like it to remain in.

The Court: I understand that but I did receive it with the understanding that they had the right to move that it be expunged or stricken in order to get ahead with the situation.

Now, I wish you would point out to me what important relevancy it does have, I mean, just to have it in there because you offer it isn't very convincing. Tell me why it ought to be in there.

Mr. Hitz: Well, the Committee, first of all, felt that the Carpenters Union's matters that they investigated were subject to a report and they reported to the full body and where the matters that we have gone into, that is, the senior

Hutcheson's biography and the thread of activity of Rad-dock, from that point on to the time that the Lake County refused to indict upon the statement by Holovachka, the Lake County prosecutor, that Lake County lacked jurisdiction, we think that all those matters have to be in the record and the other matters reported involve the heading which I have read several times which were, in the opinion of the Committee, relevant and they reported on them and we think that the continuity and context are important there.

I don't think I could pick out anything such as the Blaier [fol. 167] and Chapman investigation and answer your question that it has important relevancy—I will have to concede that that it does not—but I think the entire document is well worthwhile in showing where this particular investigation fitted in the desire of the Committee to report.

The Court: By that, do you mean that what is reported is illustrated by the whole report to have been for the legislative purpose that you insist rather than only by the portions that you say are relevant?

Mr. Hitz: I wonder if I understand. Do I mean that the other portions aid the legislative purpose of the portions that we do insist upon?

The Court: Yes.

Mr. Hitz: I think not.

The Court: You think not?

Mr. Hitz: No, I cannot make that representation.

The Court: Then I do not see why they belong there unless they have such relevancy.

Mr. Hitz: Then I will come down to pages and topics. I don't think that will take very long, Your Honor. I can come down to that with Mr. Tuttle.

The Court: Shall I take a short recess now?

Mr. Hitz: I think it might help.

The Court: Well, let's do it. If we can get something done, for goodness sake, let's do it.

(Thereupon, a short recess was taken.)

Mr. Tuttle: If Your Honor please, Mr. Hitz and I have conferred. He has indicated the pages that he wants. They do not differ from the pages that I was speaking of with the

exception that he wants a number of pages relating to the book matter.

The Court: Yes.

Mr. Tuttle: And he has indicated what they were and I agree with him as to the numbers of the pages that do relate to the book matter.

My position is simply this: I objected to the whole at the time that any portion of this Part 2 was admitted. I objected to the whole or any portion of it because it was a year and a half later.

[fol. 168] The Court: Yes.

Mr. Tuttle: Your Honor thought it might have some relevancy within the limits that you described. Of course, I am still of that view but, so far as the book matter is concerned, I objected to it. Your Honor felt it might have some relevance. It has got in. It has got intertwined with everything and for me to sit down to agree with Mr. Hitz and discuss with Your Honor how to take out what has been so thoroughly intertwined would be probably an endless task.

I stand on the position that the book and all concerning it is irrelevant and immaterial and has no bearing on this situation that is here on trial.

So far as the pages are concerned, against that background which I have just stated, Mr. Hitz agrees with me that the portion relative to the subject of possible indictments in Indiana begin on page 554 and with the words, "Of concern to the Committee in this sphere" and run to page 561, including the first paragraph on that page.

The Court: You want those in?

Mr. Hitz: Yes, but I don't understand Mr. Tuttle's beginning point on page 554. Shouldn't it be, "The second Raddock activity," shouldn't that be the beginning portion of page 554?

Mr. Tuttle: Yes, I am willing to move that up to that point so, beginning on page 554, the extract from this page will begin with the words, "The second Raddock activity in 1957."

Mr. Hitz: Yes, sir.

Mr. Tuttle: Now run to and including the first paragraph on page 561.

Mr. Hitz: Yes, sir.

Mr. Tuttle: And then going to page 590, we will begin with the word "Findings" near the bottom of page 590 and run over to take in the first three full paragraphs on page 592, in other words, down to but excluding all beginning with the words, "Hotel and Restaurant Employees and Bartenders International Union, Chicago area." That obviously has no connection with this matter whatsoever.

[fol. 169] Mr. Hitz: We agree.

The Court: All right.

Mr. Tuttle: I think Mr. Hitz will state what he wants to have in.

Mr. Hitz: We feel that under Your Honor's ruling that anything that is not importantly relevant should go out.

The Court: Yes.

Mr. Hitz: That nevertheless page 517 beginning the topic, "Maxwell C. Raddock and the United Brotherhood of Carpenters and Joiners of America," should remain in and over on to page 518 and on that page omitting only Topic 2, Topic 4 and Topic 5 and the first paragraph of Topic 6.

The Court: Let me see. Other than that which Mr. Tuttle read, which I understood he agreed with you, you are asking that these other things be left in?

Mr. Hitz: Yes, and they relate to the book matter.

The Court: To the book matter.

Mr. Hitz: As Your Honor has ruled, the book matter is in evidence.

The Court: Yes.

Mr. Hitz: Mr. Tuttle agrees, apparently, that these portions here would fall under the same ruling.

I think that is Mr. Tuttle's agreement with me. Is that correct, Mr. Tuttle?

The Court: He doesn't like the book but, as I understand it, he is not fussing about it so much.

Mr. Hitz: I don't know about that but I don't think he is urging it any further at this moment.

The Court: Yes, that is what I gather.

Mr. Hitz: So it is my understanding, then, that the portions that I am speaking of now are book material, reports to the full Senate body on the book matter and that

they do relate to the book. I think that is the agreement between Mr. Tuttle and myself.

Is that correct, Mr. Tuttle?

Mr. Tuttle: He is reading the text and I see that they do relate to the book.

[fol. 170] The Court: You understand what I am trying to do, even though it is a little against my conscience. I am trying to agree with you as much as I can and strike out what I denominated not essentially important.

Mr. Tuttle: I understood Your Honor's ruling.

The Court: All right.

Mr. Tuttle: I feel that the book matter was immaterial.

The Court: I understand that and I differ with you a little bit on that.

Mr. Hitz: And then on page 518, Topic 3 would remain in and the last paragraph on page 518 and it carries over on to page 519 which would remain in.

Mr. Tuttle: You omit paragraph 5, don't you?

Mr. Hitz: Yes, sir, I do.

Mr. Tuttle: Yes, so you omit, to be specific about it, 2, 4, 5 and 6?

Mr. Hitz: That is right.

Then we concede that the following pages up to page 533 would come within Your Honor's ruling of lacking important relevancy.

The Court: All right.

Mr. Hitz: And then we would like to remain in and under the same understanding between Mr. Tuttle and myself, the first full paragraph on page 533 and from there to page 551 and all of page 551 except the last paragraph.

The Court: Didn't he mention that?

Mr. Hitz: No, this is outside of our other agreement.

If those portions are in which are in addition to which Mr. Tuttle provisionally admits should be in, having in mind his over-all objection that the document comes too late, that is, Exhibit 6 comes too late, we then have reached agreement.

The Court: All right. In order to accomplish something, I will permit the striking of all of those except that which you have just enumerated.

Mr. Hitz: And which Mr. Tuttle excepted to on his own motion.

[fol. 171] The Court: Yes.

Mr. Hitz: I have been asked, Your Honor, to clarify what on page 518 and 519 is still in under the latest agreement and ruling.

On page 518, there would remain in that portion of Topic 1 which is carried over; Topic 3 would be in and the last paragraph on page 518 and its carry-over on to page 519 would remain in. Everything else would be out.

Mr. Tuttle: What about page 519?

Mr. Hitz: The carry-over is the first three lines on page 519.

The Court: Is it clear now?

Mr. Hitz: I think it is perfectly clear.

The Court: At least we have gotten that far.

Mr. Tuttle: Your Honor, then that brings me to certain motions on the merits. I intend to rest the defendant's case and perhaps I should make these motions on the basis of the case-in-chief by the Government and then renew them when I rest, if they are denied.

The Court: All right.

Mr. Tuttle: As to each of the questions in the indictment, I separately make, running to each separately, a motion for acquittal on the ground that the evidence that has been introduced by the Government does not constitute a prima facie case and that, in consequence, as to each of these questions I will make a separate motion.

I could discuss the bases for these motions as to each question but, as I state, I intend to rest the defendant's case if these motions are denied or any of them is denied and then to repeat them and, in that connection, I would like the indulgence of the Court to make some summation of the record, as I see it, in support of a renewal of the motions.

I consequently believe that it would be more profitable if I made that summation now or, if Your Honor prefers, after I have rested the case.

The Court: Well, I don't exactly know what you mean by summation so it seems to me that if you mean by that to point out to me what the general ground is which you believe is applicable that that would be the best thing but [fol. 172] I don't know. Is that what you mean?

Mr. Tuttle: That is what I mean, Your Honor.

The Court: I thought you did and, if so, I think that would be profitable.

Mr. Tuttle: Yes.

The Court: And if you wish to enlarge on it somewhat, I will be glad to have you do it but not too much.

Mr. Tuttle: . . . Consequently, I want to thank Your Honor for hearing me as you have so fully and I make these motions, as I have stated, separately as to each one of these questions, for an acquittal.

The Court: The question I have got to decide is, did the Congressional Committee have the right to ask the questions?

Mr. Tuttle: Certainly, sir.

ORAL RULING OF COURT

The Court: And I say it did have the right to ask the questions and the man is in contempt of court in not answering them. That is my answer. Any other answer in this jurisdiction has got to come from the Court of Appeals.

The Sacher case, Mr. Hitz doesn't seem to think it is in point with the facts in this case. I disagree with him. I think it is absolutely dispositive of what is involved in this case and I think it makes it abundantly clear that the relief that this defendant ought to have gotten before the Committee of Congress was his claim under the immunity clause of the Fifth Amendment. He did not seek it and it is the only way he could properly seek it, before a Committee of Congress.

That is my ruling and that is what I hold.

You can prepare a decree accordingly.

I find the defendant guilty of all counts of the indictment and the matter is referred to the Probation Officer for presentence investigation.

(In Chambers)

The Court: They have asked me to repeat again my findings in this case so it could be done in your presence so that is what I am doing.

[for 173] Instead of writing an opinion in the case, I will just simply state what I did from the bench that I find this defendant guilty on all of the counts in the indictment as charged and am referring him to the Probation Officer for presentence investigation and we will handle the matter of the indictment as has been suggested because it is desired that the superseding indictment be filed in lieu of the one that was originally filed.

Mr. Hitz: The superseding indictment has already been filed and the defendant was arraigned on the first day of this trial on the superseding indictment and that is the one we have tried, 152-60, which is the case we have been trying. The original indictment which had a typographical error in it is the one which we will dismiss as soon as the Bondsman has completed the transfer of his obligation to the new indictment.

The Court: I see what it is so we proceed, really, on the reindictment.

Mr. Hitz: That is right, which is the superseding indictment.

The Court: But the bond has not actually been made as to that indictment, is that correct?

Mr. Hitz: Not yet. That is right.

The Court: All right.

Mr. Hitz: The trial and the findings were on the second indictment that the Clerk just read and may the record show that Mr. Hutcheson, the defendant, is present at this part of this proceeding?

The Court: Yes. It will be noted that Mr. Hutcheson is present.

Mr. Tuttle: And I understand the existing bond will be deemed—

The Court: Adequate.

Mr. Tuttle: Adequate until the Bondsman addresses himself to the new indictment.

Mr. Hitz: So far as the Government is concerned, that is correct.

The Court: I was satisfied that that would be all right.

Mr. Tuttle: Yes, Your Honor.

Mr. Hitz: Thank you, sir.

(Thereupon, at 3:30 o'clock p.m., the trial was concluded.)

[fol. 174]

GOVERNMENT'S EXHIBIT No. 1

[Filed July 18, 1960].

85th Congress
1st Session

S. RES. 74

[Report No. 44]

IN THE SENATE OF THE UNITED STATES

January 29, 1957

Mr. McClellan (for himself, Mr. Hill, Mr. Ives, and Mr. McCarthy) submitted the following resolution; which was referred to the Committee on Rules and Administration

January 30, 1957

Reported by Mr. HENNINGA, with amendments

January 30, 1957

Considered, amended, and agreed to

RESOLUTION

Resolved, That there is hereby established a select committee which is authorized and directed to conduct an investigation and study of the extent to which criminal or other improper practices or activities are, or have been, engaged in in the field of labor-management relations or in groups or organizations of employees or employers to the detriment of the interests of the public, employers or

employees, and to determine whether any changes are required in the laws of the United States in order to protect such interests against the occurrence of such practices or activities.

Sec. 2 (a) The select committee shall consist of eight members to be appointed by the Vice President, four each from the majority and minority Members of the Senate, and shall, at its first meeting, to be called by the Vice President, select a chairman and vice chairman, and adopt rules of procedures not inconsistent with the rules of the Senate.

(b) Any vacancy shall be filled in the same manner as the original appointments.

[fol. 175] **Sec. 3 (a)** The select committee shall report to the Senate by January 31, 1958, inclusive, and shall, if deemed appropriate, include in its report specific legislative recommendations.

(b) Upon the filing of its final report the select committee shall cease to exist.

Sec. 4. For the purposes of this resolution the select committee is authorized as it may deem necessary and appropriate to (1) make such expenditures from the contingent fund of the Senate; (2) hold such hearings; (3) sit and act at such times and places during the sessions, recesses, and adjournment periods of the Senate; (4) require by subpoena or otherwise the attendance of such witnesses and production of such correspondence, books, papers, and documents; (5) administer such oaths; (6) take such testimony, either orally or by deposition; (7) employ on a temporary basis such technical, clerical, and other assistants and consultants; and (8) with the prior consent of the executive department or agency concerned and the Committee on Rules and Administration, employ on a reimbursable basis such executive branch personnel as it deems advisable; and further with the consent of other committees or subcommittees, to work in conjunction with and utilize their staffs, as it shall be deemed necessary

and appropriate in the judgment of the chairman of the select committee.

Sec. 5. The expenditures authorized by this rescission shall not exceed \$350,000, and shall be paid upon vouchers signed by the chairman of the select committee.

[fol. 176]

GOVERNMENT'S EXHIBIT No. 2

[Filed July 18, 1960]

85th Congress
1st Session

S. Res. 88

IN THE SENATE OF THE UNITED STATES

February 7, 1957

Mr. McClellan submitted the following resolution; which was considered and agreed to

RESOLUTION

Resolved, That Section 2 of S. Res. 74, Eighty-fifth Congress, first session, agreed to January 30, 1957 (establishing a select committee to investigate certain matters pertaining to labor-management relations), is amended by striking out the period at the end of subsection (a) thereof and inserting in lieu thereof the following: "governing standing committees of the Senate."

GOVERNMENT'S EXHIBIT No. 3

[Filed July 18, 1960]

85th Congress
2d Session

S. RES. 221

[Report No. 1210]

IN THE SENATE OF THE UNITED STATES

January 16, 1958

Mr. McClellan submitted the following resolution; which
was referred to the Committee on Rules and Administration

January 27, 1958

Reported by Mr. HENNINGS, with an amendment

JANUARY 29 (legislative day, JANUARY 27), 1958

Considered, amended, and agreed to

[fol. 177]

RESOLUTION

RESOLVED, That the select committee, authorized and directed to conduct an investigation and study of the extent to which criminal or other improper practices or activities are, or have been, engaged in in the field of labor-management relations or in groups or organizations of employees or employers, to the detriment of the interests of the public, employers, or employees, and to determine whether any changes are required in the laws of the United States in order to protect such interests against the occurrence of such practices or activities, established by S. Res. 74, Eighty-fifth Congress, first session, agreed to January 30, 1957, as amended by S. Res. 88 of the Eighty-fifth Congress, first session, agreed to February 7, 1957, is hereby continued. Any vacancy in the select committee so continued shall be filled in the same manner as the original appointments were made under section 2 of S. Res. 74, Eighty-fifth Congress, first session, as amended.

Sac. 2. For the purposes of this resolution, the select committee, from February 1, 1958, to January 31, 1959, inclusive, is authorized, as it may deem necessary and appropriate to (1) make such expenditures from the contingent fund of the Senate; (2) hold such hearings; (3) sit and act at such times and places during the sessions, recesses, and adjournment periods of the Senate; (4) require by subpoena or otherwise the attendance of such witnesses and production of such correspondence, books, papers, and documents; (5) administer such oaths; (6) take such testimony, either orally or by deposition; (7) employ on a temporary basis such technical, clerical, and other assistants and consultants; and (8) with the prior consent of the executive department or agency concerned and the Committee on Rules and Administration, employ on a reimbursable basis such executive branch personnel as it deems advisable; and further with the consent of other committees or subcommittees, to work in conjunction with and utilize their staffs, as it shall be deemed necessary and appropriate in the judgment of the chairman of the select committee.

Sac. 3. Notwithstanding the provisions of section 3 of S. Res. 74, Eighty-fifth Congress, as amended, the select [fol. 178] committee shall report its findings, together with its recommendations for legislation as it deems advisable, to the Senate at the earliest practicable date, but not later than January 31, 1959, on which date the select committee shall cease to exist.

Sac. 4. Notwithstanding the provisions of section 5 of S. Res. 74, Eighty-fifth Congress, as amended, expenses of the select committee, under this resolution, shall not exceed \$500,000 and shall be paid from the contingent fund of the Senate upon vouchers approved by the chairman of the committee.

GOVERNMENT'S EXHIBIT No. 4

[Filed July 18, 1960]

85th Congress
2d SessionS. RES. 362
[Report No. 2265]

IN THE SENATE OF THE UNITED STATES

August 8, 1958

Mr. McClellan, from the Senate Select Committee on Improper Activities in the Labor or Management Field, reported the following resolution; which was ordered to be placed on the calendar

August 18 (legislative day, August 16), 1958

Considered and agreed to

RESOLUTION

RESOLVED, That the President of the Senate certify the report of the Select Committee on Improper Activities in the Labor or Management Field of the United States Senate as to the refusal of Maurice A. Hutcheson to answer questions before the Senate Select Committee on Improper Activities in the Labor or Management Field, pertinent to the subject matter under inquiry, together with all the facts in connection therewith, under the seal of the United States Senate to the United States Attorney for the District of Columbia, to the end that the said Maurice A. Hutcheson may be proceeded against in the manner and form provided by law.

[fol. 179]

GOVERNMENT'S EXHIBIT No. 47

[Filed July 18, 1960]

THE STATE OF INDIANA, MARION COUNTY, ss.:

CRIMINAL COURT OF MARION COUNTY

JANUARY TERM, 1958

Indictment for CONSPIRACY TO COMMIT A FELONY, TO
WIT: BRIBERY OF STATE OFFICER AND BRIBERY OF STATE
OFFICER.

THE STATE OF INDIANA,

VS.

MAURICE A. HUTCHESON, FRANK M. CHAPMAN,
O. WILLIAM BLAIER.

The Grand Jury for the County of Marion in the State of
Indiana, upon their oath do present that

MAURICE A. HUTCHESON, FRANK M. CHAPMAN and O.
WILLIAM BLAIER

on or about the 1st day of May, A.D. 1956, at and in the
County of Marion and in the State of Indiana, did then
and there unlawfully, knowingly and feloniously unite,
combine, conspire, confederate and agree to and with each
other, for the object and purpose and with the unlawful
and felonious intent then and there to unlawfully, felo-
niously and corruptly promise and offer to pay as a bribe
to HARRY DOGGETT, who was then and there an officer,
employee and a person holding an office of profit or trust
under the laws of the State of Indiana, to-wit: Assistant
Director, Right of Way Department of the State High-
way Department of Indiana, one-fifth (1/5) of all profits
thereafter received by the defendants, or any of said
defendants, in lawful money of the United States, arising
out of any and all grants or conveyances of rights of way
by the defendants, or any of said defendants, to the State
of Indiana across real estate owned by the defendants, or

any of them, in the State of Indiana, then and there and thereby intending to corruptly influence the official action, opinion or judgment of the said HARRY DOGGETT, as Assistant Director of the Right of Way Department of the State Highway Department of Indiana, concerning a matter then pending or that might legally come before him, to-wit: approval of grants of rights of way across real estate owned by the defendants, or any of them, in the State of Indiana: that thereafter, pursuant [fol. 180] to and in furtherance of the aforesaid conspiracy, and pursuant to said corrupt promise and offer to pay a bribe, as aforesaid, the said HARRY DOGGETT did exercise his official action, opinion or judgment concerning the approval by the Right of Way Department of the State Highway Department of Indiana of certain grants of rights of way across the following described real estate owned by the defendant, FRANK M. CHAPMAN, in Lake County, State of Indiana, to-wit:

Tract Nine (9), Grant Street Plat, as shown in Plat Book #26, Page #52, in Lake County, Indiana

Tract Three (3), Harrison Street Plat, as shown in Plat Book #26, Page 50, in Lake County, Indiana

Lot Twenty-four (24), Block fifty-four (54), except that part in the rear of said lot taken for alley purpose, Chicago-Tolleston Land and Investment Company's Second-Oak Park Addition to Tolleston, in the City of Gary, Lake County, Indiana

Lot Twenty-six (26), Block fifty-four (54), except that part in the rear taken for alley purposes, Chicago-Tolleston Land and Investment Company's Second Oak Park Addition to Tolleston, in the City of Gary, Lake County, Indiana

Lot Twenty-three (23), Block Fifty-four (54), except that part in the rear of said lot taken for alley purposes, Chicago-Tolleston Land and Investment Company's Second Oak Park Addition to Tolleston, in the City of Gary, Lake County, Indiana

And that thereafter, pursuant to and in furtherance of the aforesaid conspiracy, and pursuant to said corrupt promise and offer to pay a bribe, as aforesaid, the said HARRY DOGGETT did exercise his official action, opinion or judgment concerning the approval by the Right of Way Department of the State Highway Department of Indiana of a certain grant of right of way across the following described real estate owned by the defendant, O. WILLIAM BLAIRE in Wayne County, State of Indiana, to-wit:

[fol. 181] Real Estate in Wayne County, State of Indiana, being a part of the Southwest Quarter of Section Eight (8), Township Fourteen (14) Range One (1) West, bounded and described as follows, to-wit: Beginning at the southeast corner of said quarter; thence West along the section line Thirty-eight and Seventy-five Hundredths (38.75) rods to a stone; thence North One Hundred Twenty-six and Eighty-four Hundredths (126.84) rods to a stone; thence East Thirty-eight and Seventy-five Hundredths (38.75) rods to the quarter section line; thence South along the quarter section line One Hundred Twenty-six and Eighty-four Hundredths (126.84) rods to the place of beginning, containing Thirty and Forty Hundredths (30.40) acres, more or less. Also a part of the southeast quarter of Section Eight (8), Township Fourteen (14), Range One (1) West, bounded and described as follows, to-wit: Beginning at the southwest corner of said quarter section, running thence East along the section line Fifty-Nine and five tenths (59.5) rods to a stake; thence North One (1) degree East Forty-four and Four Tenths (44.4) rods to a stake; thence North Eighty-eight (88) degrees West Thirty-eight and Sixteen Hundredths (38.16) rods to a stone; thence North parallel with the west line of said quarter section Sixty-eight and eighty-two Hundredths (68.82) rods to the center of the Richmond and Newport Turnpike; thence in a Northwesterly direction along the center of said turnpike to the west line of said quarter; thence South along said west line One Hundred Twenty-seven (127) rods to the place of beginning, containing Twenty-seven and Nineteen Hundredths

(27.19) acres, more or less, containing in both tracts Fifty-seven and Fifty-nine Hundredths (57.59 acres, more or less. EXCEPT that part thereof containing Sixteen and Sixty-five Hundredths (16.65) acres, more [fol. 182] or less conveyed to Glenn E. Muckridge and wife by deed dated February 27, 1956 and recorded in Deed Record 271, page 268 of the records of Wayne County, Indiana. EXCEPT a part of the Southeast Quarter of Section Eight (8), Township Fourteen (14) North, Range One (1) West in Wayne Township, Wayne County, Indiana and being more particularly described as follows: Beginning at a point in the south line of said quarter, said point being 673.36 feet East of the southwest corner of said quarter, and running thence East, on the south line of said quarter 308.39 feet; thence North 1 degree East 730.5 feet to a hedge fence; thence North 86 degrees West along said fence, 501.44 feet; thence south 42 minutes East 521.25 feet; thence South 39 degrees and 21 minutes East Two Hundred Eighty-five and Eighty-seven Hundredths (285.87) feet to the place of beginning, containing an area of 7.92 acres, more or less.


And that thereafter pursuant to and in furtherance of the aforesaid conspiracy and pursuant to said corrupt promise and offer to pay a bribe, as aforesaid, defendants did on or about the 17th day of December, A.D. 1956, pay the sum of ten thousand (\$10,000.00) dollars in lawful money of the United States to the said HARRY DOGGETT; and that thereafter pursuant to said corrupt promise and offer to pay a bribe, as aforesaid, defendants did on or about the 17th day of January, A.D. 1957, pay the sum of two thousand (\$2,000.00) dollars in lawful money of the United States to the said HARRY DOGGETT; and that thereafter pursuant to and in furtherance of the aforesaid conspiracy and pursuant to said corrupt promise and offer to pay a bribe, as aforesaid, defendants did on or about the 30th day of January, A.D. 1957, pay the sum of three thousand eight hundred (\$3,800.00) dollars in lawful

money of the United States for the said HARRY DOGGETT, then and there being contrary to the form of the statute in such case made and provided, and against the peace [fol. 183] and dignity of the State of Indiana.

/s/ JOHN G. FUDER
Prosecuting Attorney
Nineteenth Judicial Circuit

COUNT TWO:

The Grand Jury for the County of Marion in the State of Indiana, upon their oath do further present that MAURICE A. HUTCHESON, FRANK M. CHAPMAN and O. WILLIAM BLAIER on or about the 1st day of May, A.D. 1956, at and in the County of Marion and in the State of Indiana, did then and there unlawfully, feloniously and corruptly promise and offer to pay as a bribe to HARRY DOGGETT, who was then and there an officer, employee and a person holding an office of profit or trust under the laws of the State of Indiana, to-wit: Assistant Director of the Right of Way Department of the State Highway Department of Indiana, one-fifth (1/5) of all profits thereafter received by the defendants, or any of said defendants, to lawful money of the United States, arising out of any and all grants or conveyances or rights of way by the defendants, or any of said defendants, to the State of Indiana across real estate owned by the defendants, or any of them, in the State of Indiana, then and there and thereby intending to corruptly influence the official action, opinion and judgment of the said HARRY DOGGETT, as Assistant Director of the Right of Way Department of the State Highway Department of Indiana, concerning a matter then pending or that might legally come before him, to-wit: approval of grants of rights of way across real estate owned by the defendants, or any of them, in the State of Indiana; that thereafter, and pursuant to said corrupt promise and offer to pay a bribe, as aforesaid, the said HARRY DOGGETT, did exercise his official action, opinion or judgment concerning the approval by the Right of Way Department of the State Highway Department of Indiana, of certain grants of rights of way across the following described real estate



owned by the defendant, Frank M. Chapman, in Lake County, State of Indiana, to-wit:

[fol. 184] Tract Nine (9), Grant Street Plat, as shown in Plat Book #26, Page #52, In Lake County, Indiana

Tract Three (3), Harrison Street Plat, as shown in Plat Book #26, Page 50, in Lake County, Indiana

Lot Twenty-four (24), Block fifty-four (54), except that part in the rear of said lot taken for alley purpose, Chicago-Tolleston Land and Investment Company's Second Oak Park Addition to Tolleston, in the City of Gary, Lake County, Indiana

Lot Twenty-six (26), Block fifty-four (54), except that part in the rear taken for alley purposes, Chicago-Tolleston Land and Investment Company's Second Oak Park Addition to Tolleston, in the City of Gary, Lake County, Indiana

Lot Twenty-three (23), Block Fifty-four (54), except that part in the rear of said lot taken for alley purposes, Chicago-Tolleston Land and Investment Company's Second Oak Park Addition to Tolleston, in the City of Gary, Lake County, Indiana

And that thereafter, and pursuant to said corrupt promise and offer to pay a bribe, as aforesaid, the said HARRY DOGGETT did exercise his official action, opinion or judgment concerning the approval by the Right of Way Department of the State Highway Department of Indiana of a certain grant of right of way across the following described real estate owned by the defendant, O. WILLIAM BLAINE, in Wayne County, State of Indiana, to-wit:

Real Estate in Wayne County, State of Indiana, being a part of the Southwest Quarter of Section Eight (8), Township Fourteen (14) Range One (1) West, bounded and described as followed, to-wit: Beginning at the southeast corner of said quarter; thence West along the section line thirty-eight and Seventy-five Hundredths (38.75) rods to a stone; thence North

One Hundred Twenty-six and Eighty-four Hundredths [fol. 185] (126.84) rods to a stone; thence East Thirty-eight and Seventy-five Hundredths (38.75) rods to the quarter section line; thence South along the Quarter section line One Hundred Twenty-six and Eighty-four Hundredths (126.84) rods to the place of beginning, containing Thirty and Forty Hundredths (30.40) acres, more or less. Also a part of the southeast quarter of Section Eight (8), Township Fourteen (14), Range One (1) West, bounded and described as follows, to-wit: Beginning at the southwest corner of said quarter section, running thence East along the section line Fifty-nine and Five Tenths (59.5) rods to a stake; thence North One (1) degree East Forty-four and Four Tenths (44.4) rods to a stake; thence North Eighty-eight (88) degrees West Thirty-eight and Sixteen Hundredths (38.16) rods to a stone; thence North parallel with the west line of said quarter section; Sixty-eight and Eighty-two Hundredths (68.82) rods to the center of the Richmond and Newport Turnpike; thence in a Northwesterly direction along the center of said turnpike to the west line of said quarter; thence South along West line One Hundred Twenty-seven (127) rods to the place of beginning, containing Twenty-seven and Nineteen Hundredths (27.19) acres, more or less, containing in both tracts Fifty-seven and Fifty-nine Hundredths (57.59) acres, more or less. EXCEPT that part thereof containing Sixteen and Sixty-five Hundredths (16.65) acres, more or less conveyed to Glenn E. Muckridge and wife by deed dated February 27, 1956 and recorded in Deed Record 271, page 268 of the records of Wayne County, Indiana. EXCEPT a part of the Southeast Quarter of Section Eight (8), Township Fourteen (14) North, Range One (1) West in Wayne Township, Wayne County, Indiana, and being more particularly described as follows: Beginning at a point in the south line of said quarter, said point being 673.36 feet East of the [fol. 186] southwest corner of said quarter, and running thence East, on the south line of said quarter

308.39 feet; thence North 1 degree East 730.5 feet to a hedge fence; thence North 88 degrees West along said fence, 501.44 feet; thence South 42 minutes East 521.25 feet; thence South 39 degrees and 21 minutes East Two Hundred Eighty-five and Eighty-seven Hundredths (285.87) feet to the place of beginning, containing an area of 7.92 acres, more or less.

And that thereafter, pursuant to said corrupt promise and offer to pay a bribe, as aforesaid, defendants did on or about the 17th day of December, A.D. 1956, pay the sum of ten thousand (\$10,000.00) dollars in lawful money of the United States to the said Harry Boggett, then and there being contrary to the form of the statute in such case made and provided, and against the peace and dignity of the State of Indiana.

/s/ JOHN G. FUDER
Prosecuting Attorney
Nineteenth Judicial Circuit

IN UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA
Criminal No. 153-60

UNITED STATES OF AMERICA,

v.

MAURICE A. HUTCHESON.

JUDGMENT AND COMMITMENT—May 13, 1960

On this 13th day of May, 1960, came the attorney for the government and the defendant appeared in person and by counsel, Joseph P. Tumulty, Jr., and Charles H. Tuttle, Esquire.

It Is Adjudged that the defendant has been convicted upon his plea of not guilty and a finding of guilty of the

offense of Violations of Section 192, Title 2 of the U. S. Code as charged and the court having asked the defendant whether he has anything to say why judgment should not [fol. 187] be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of Six (6) months, and to pay a fine of Five Hundred (\$500.00) Dollars.

It Is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

James W. Morris, United States District Judge.

IN UNITED STATES DISTRICT COURT

NOTICE OF APPEAL—Filed May 13, 1960

Name and address of appellant: Maurice A. Hutcheson, 3741 North Meridian St., Indianapolis, Indiana

Name and address of appellant's attorneys: Charles H. Tuttle, 15 Broad St., New York 5, N. Y.; Joseph P. Tumulty, Jr., 1317 F Street, N.W., Washington 4, D.C.

Offense: Contempt of Congress—2 U.S.C. Sec. 192

Concise statement of judgment or order, giving date, and any sentence: Found guilty April 11, 1960. Sentenced May 13, 1960 to pay fine of \$500 and imprisonment for 6 months. Payment of fine and imprisonment stayed pending appeal and defendant released to custody of his attorney pending filing notice of appeal and appeal bond.

Name of institution where now confined, if not on bail:
[None]

I, the above-named appellant, hereby appeal to the United States Court of Appeals for the District of Columbia Circuit from the above-stated judgment.

Maurice A. Hutcheson, Appellant.

Charles H. Tuttle, Joseph P. Tumulty, Jr., Attorney for Appellant.

Date: May 13, 1960

[fol. 188] [File endorsement omitted]

IN UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

September Term, 1960

District Court Criminal No. 153-60

No. 15,906

MAURICE A. HUTCHESON, Appellant,

v.

UNITED STATES OF AMERICA, Appellee.

Appeal From the United States District Court for the
District of Columbia

Before: Mr. Justice Reed, retired, Edgerton and Prettyman, Circuit Judges.

JUDGMENT—December 7, 1960

This Cause came on to be heard on the record on appeal from the United States District Court for the District of Columbia, and was argued by counsel.

On Consideration Whereof It is ordered and adjudged by this Court that the judgment of the District Court appealed from in this cause be, and it is hereby, affirmed.

Per Curiam

Dated: December 7, 1960

[fol. 189] Petition for rehearing covering 16 pages filed December 20, 1960 omitted from this print.

It was denied, and nothing more by order January 9, 1961.

[fol. 199] [File endorsement omitted]

IN UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

[Title omitted]

ORDER DENYING PETITION FOR REHEARING—JANUARY 9, 1961

Upon consideration of appellant's petition for rehearing, it is Ordered by the court that the petition for rehearing is denied.

Per Curiam.

Dated: January 9, 1961

[fol. 202] Clerk's certificate to foregoing transcript (omitted in printing).

[fol. 203]

SUPREME COURT OF THE UNITED STATES

No. 701, October Term, 1960

MAURICE A. HUTCHESON, Petitioner,

vs.

UNITED STATES.

ORDER ALLOWING CERTIORARI—April 3, 1961

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Office-Supreme Court, U.S.

FILED

FEB 7 1961

JAMES B. BROWNING, Clerk

LIBRARY

SUPREME COURT, U. S.

Supreme Court of the United States

October Term, 1960

No. ~~288~~ 46

MAURICE A. HUTCHESON,

Petitioner.

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI to the United States Court of Appeals for the District of Columbia Circuit

CHARLES H. TUTTLE,
15 Broad Street,
New York 5, N. Y.

JOSEPH P. TUMULTY, JR.,
1317 F Street, N.W.,
Washington 4, D. C.,

Attorneys for Petitioner.

CHARLES H. TUTTLE,
THORNTON C. LAND,
JOSEPH P. TUMULTY, JR.,
M. JOSEPH MATAN,
Of Counsel.

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For these reasons also the Committee was invading the rights of the petitioner to due process of law

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Supreme Court of the United States

October Term, 1960

No. _____

MAURICE A. HUTCHESON,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI

The Petitioner, Maurice A. Hutcheson, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit, filed on December 7, 1960, affirming the judgment of the United States District Court for the District of Columbia filed May 18, 1960, after a trial before Judge James W. Morris, without a jury, on April 5-11, 1960 (186).*

The judgment of the District Court adjudged the defendant guilty of violations of Act of June 22, 1938, c. 594, 52 Stat. 942, U. S. C. A., Title 2, §192.

* The numerals are, unless otherwise indicated, page numbers in the Joint Appendix constituting the record as printed for the use of the court below.

The indictment charged the petitioner with unlawfully refusing on June 27, 1958, to answer eighteen questions propounded to him by the Senate Select Committee on Improper Activities in the Labor or Management Field. Each such question constituted a separate count (2A).

The petitioner was sentenced to imprisonment for six months and to a fine of \$500.

Opinion Below

The Court of Appeals affirmed without opinion.

In the District Court Judge Morris, in rendering decision, made the oral statement of opinion contained on page 172 of the Joint Appendix and reproduced on page 8, *post*.

Jurisdiction

The jurisdiction of this Court rests on 28 U. S. C. Section 1254 (1).

The judgment of the Court of Appeals was filed on December 7, 1960.

A timely petition for rehearing was denied, without opinion, on January 9, 1961.

Questions Presented for Review

(1) Whether, in requiring the petitioner, then under Indiana indictment for felony, to answer the questions specified in the indictment tried in the District Court, the Select Committee

- (a) acted without lawful power or jurisdiction;
- (b) deprived the petitioner of due processes of law;

(c) deprived the petitioner of his constitutional and common law right to the assistance and protection of counsel in the matter of the Indiana indictment, or impaired such right;

(d) deprived the petitioner of his constitutional right to be tried by the Indiana court and not pre-tried by the Committee in whole or in part;

(e) assumed powers which could be lawfully exercised only by executive and judicial branches of government;

(f) by its procedures, public statements, press release, implications and pronouncements of guilt, and instigation of Indiana prosecuting officials, intervened in a pending criminal prosecution of the petitioner, publicly pilloried him and impaired his constitutional and common law rights in and to a fair, impartial, unprejudiced and unprejudged trial of the Indiana indictment.

(2) Whether the petitioner was guilty of wilful contempt for refusing to answer questions which his Indiana defense counsel, who also acted as his counsel before the Committee, advised could, under Indiana law, aid the Indiana prosecution; and particularly so where the Committee itself had assured exclusion from the inquiry of matters to which, as his counsel advised, the questions actually related, and also particularly so where his counsel's advice was right.

(3) Whether it was rightly held below that the petitioner's only recourse was the Self-Incrimination Clause of the Fifth Amendment.

(4) Whether the Government proved criminal intent beyond a reasonable doubt.

Statute and Constitutional Provisions Involved

Title 2 USCA Sec. 192 (52 Stat. 942) provides:

"192. Refusal of witness to testify or produce papers

Every person who having been summoned as a witness by the authority of either House of Congress to give testimony or to produce papers upon any matter under inquiry before either House, or any joint committee established by a joint or concurrent resolution of the two Houses of Congress, or any committee of either House of Congress, willfully makes default, or who, having appeared, refuses to answer any question pertinent to the question under inquiry, shall be deemed guilty of a misdemeanor, punishable by a fine of not more than \$1,000 nor less than \$100 and imprisonment in a common jail for not less than one month nor more than twelve months."

The Fifth and Sixth Amendments are printed in the Appendix, p. 37, *post*. The separation of the three branches of government is inherent in the American constitutional system, federal and state.

Statement of the Case

The petitioner is the General President of the United Brotherhood of Carpenters and Joiners of America with headquarters in Indianapolis, Indiana.

On February 18, 1958, he and Frank M. Chapman and O. William Blaier were individually indicted by the grand jury of Marion County, Indiana. (Committee and Government Exhibit 47 [76, 85, 179]).

The indictment was in two counts which respectively charged the defendants with conspiracy to promise to bribe and with bribing one Harry Doggett, Assistant Director,

Right of Way Department of the State Highway Department of Indiana, with one-fifth of all profits by the defendants from all grants of rights of way by the defendants or any of them to the State of Indiana across real estate owned by the defendants, or any of them, in Indiana (179-186). No terminal date for the conspiracy charged was alleged.

The offenses charged were felonies and wholly personal. Neither the Brotherhood nor its property or funds were charged to be involved.

Thereafter, on June 26, 27, 1958, this petitioner, pursuant to subpoena, appeared before the Select Committee (Senator John L. McClellan, Chairman). He was accompanied by counsel, Mr. Howard Travis, a member of the Indiana bar, who was also counsel for him and his co-defendant Blaier in the matter of the Indiana indictment (8, 82, 88, 74, 131-2).

The Committee opened its interrogation on June 26 into what its counsel comprehensively termed the Indiana "highway scandal" and "the road situation out in Indiana" (69, 76, 51) by announcing and reading into its record a "statement in background of this situation to clarify it" "so that there will be no doubt as to the subject matter being inquired into" (18).

That "statement" is reproduced in full on pages 13-15, *post*. It included as "involved in this situation" the aforesaid bribery indictment against the petitioner and others; the charges therein; the land "deal" achieved thereby; "the \$78,000 profit made on the deal"; and the subsequent "restitution" of this "profit" as part of a conspiracy to prevent indictment for "the deal" (18, 19). The indictment was incorporated by the Committee in its record as Exhibit 47 (78, 179).

On June 27, 1958, questions on various subjects, including the aforesaid Indiana highway matter, were put to the petitioner by the Committee and its counsel, Robert F. Kennedy (86 *et seq.*).

The petitioner answered all questions except those as to which Mr. Travis advised that they ran to matters which related or might be claimed to relate to the aforesaid pending indictment in Indiana or to aid the prosecution thereof, and were in denial of due processes of law and specified guarantees under the Fifth and Sixth Amendments (88-91). The petitioner followed this advice, and respectfully declined answers to such questions (122, 123, 130). At the same time the petitioner expressly disclaimed exercising the privilege against self-incrimination contained in the Fifth Amendment to the Constitution of the United States (126, 133).

The petitioner thus declined to answer the eighteen questions which are the subject of the counts in the indictment, to wit (2A):

1. Has he [Mr. Raddock] received from the union payment for acts performed in your behalf and for you as an individual?

2. Have you, unrelated to this offense charged in the indictment now against you, engaged the services of Mr. Raddock, and have you paid him out of union funds for the performance of those services, to aid and assist you in avoiding or preventing an indictment from being found against you or for being criminally prosecuted for any other offense other than that mentioned in this indictment?

3. Did you engage the services of Mr. Raddock and pay him for those services out of union funds, to contacts, either directly or indirectly, the county prosecuting attorney, Mr. Holovachka, given name Metro, in Lake County, Gary, Ind.?

4. Have you paid Max C. Raddock out of union funds for personal services rendered to you at any time within the past 5 years?

5. Have you used union funds to pay Max C. Raddock for any services rendered to you personally, wholly disassociated from any matters out of which the pending criminal charge arose?

6. Was he there [in Chicago] on union business for which the union had the responsibility for payment?

7. Was Mr. Raddock paid on that trip, the expenses of his paid by union funds while he was on union business?

8. You were out in Chicago at the same time?

9. Were your expenses on that Chicago trip paid by the union?

10. Were you out in Chicago at that time on union business?

11. Do you know Mr. James Hoffa?

12. Did you make an arrangement with Mr. Hoffa that he was to perform tasks for you in return for your support on the question of his being ousted from the A. F. of L.-CIO?

13. Isn't it a fact that you telephoned Mr. Hoffa from your hotel in Chicago on August 12, 1957?

14. And wasn't that telephone call in fact paid out of union funds, the telephone call that you made to him on August 12?

15. Do you also know Mr. Sawochka of the Brotherhood of Teamsters?

16. Isn't it a fact that you had Mr. Plymate who is a representative of the brotherhood, telephone, and your secretary telephone, Mr. Sawochka from your room on August 13, 1957?

17. And isn't it a fact that that telephone bill and that telephone call was paid out of union funds?

18. Did you have any business with local 142 of the Teamsters in Gary, Ind.?

At the conclusion of its interrogation of the petitioner the Committee placed in its record and issued to the public and the press "a closing statement" (150-2) declaring that the petitioner with others "were involved in a conspiracy to subvert justice in the State of Indiana;" that "further exposure we believe can and should be made"; and that "we will be glad to assist and help law enforcement officials in the State of Indiana if they determine that they would interest themselves in the matter."

The trial in the District Court consisted of readings by the prosecution from the transcript of proceedings before the Committee in June, 1958, and of testimony by Senator McClellan and Paul J. Tierney, assistant counsel to the Committee, called as Government witnesses.

Senator McClellan testified in the course of prosecution questioning: "Our legislative purpose is to search out and find if crime has been committed" (163).

At the close of the trial Judge Morris rendered the following oral decision (172):

"The Court: And I say it (the Committee) did have the right to ask the questions and the man is in contempt of court in not answering them. That is my answer. Any other answer in this jurisdiction has got to come from the Court of Appeals.

The *Sacher* case, Mr. Hitz doesn't seem to think it is in point with the facts in this case. I disagree with him. I think it is absolutely dispositive of what is involved in this case and I think it makes it abundantly clear that the relief that this defendant ought to have gotten before the Committee of Congress was his claim under the immunity clause of the Fifth

Amendment. He did not seek it and it is the only way he could properly seek it, before a Committee of Congress.

That is my ruling and that is what I hold.
You can prepare a decree accordingly."

Reasons for Granting the Writ

(1) So far as we can find, this case presents the first instance where a Congressional Committee, claiming powers of investigation, has confronted a witness with a statement of "background", "information" and specifications of "the subject matter being inquired into" which expressly set forth the fact and circumstances of a felony indictment then pending against him in a state court, and facts and circumstances antecedent to such indictment and capable of aiding (as rightly so advised by his counsel) both substantively and adjectively the prosecution and trial of each indictment (18-20).

(2) Also, so far as we can find, this case presents the first instance where a court has held that a witness so under indictment and so confronted and interrogated by the Congressional Committee can properly seek relief "only" by claiming the Self-Incrimination Clause (172).

(3) Also, so far as we can find, this case presents the first instance where, notwithstanding that resort before the Congressional Committee to the Self-Incrimination Clause could be utilized adversely to the witness on the trial of his state indictment, a federal court has nevertheless held that such resort was his "only" means of relief before the Congressional Committee (172).

(4) Also, so far as we can find, this case presents the first instance where, notwithstanding that a plea of self-

incrimination as to a state offense is not available in law as against federal interrogation, a federal court has nevertheless held that such a plea was in law "the only way he (the witness) could properly seek it (relief) before a Committee of Congress" inquiring into circumstances constituting an avowed state offense and capable of aiding the prosecution of the pending state indictment against the witness (172).

(5) Also, so far as we can find, this case presents the first instance where the inquiring Congressional Committee ~~has~~, both before and during such interrogation of the witness under such indictment, has intervened in his pending prosecution, has publicly pilloried him with implications and averments of guilt in anticipation of his trial on the pending indictment, and has closed his interrogation with an immediate nation-wide press release calling for his "further exposure" and offering to "help law enforcement officials in the state" where such indictment was pending (150-1).

Hence, we respectfully submit that the present case plainly satisfies the criteria for certiorari established by the Court's Rule 19.

AMPLIFYING ARGUMENT

POINT I

The refusal by the petitioner, then under pending Indiana indictment charging felonies, did not constitute criminal contempt.

(1) The Government's brief below advanced as a basic assertion (p. 21) that the fact that

"appellant was under indictment was not sufficient to negate the existence of a legislative purpose."

But what this case involves are the rights of the indicted person when under legislative interrogation.

In *Watkins v. United States*, 354 U. S. 178, this Court said (p. 188):

"The Bill of Rights is applicable to investigations as to all forms of governmental action."

In *Barenblatt v. United States*, 360 U. S. 109, this Court said (p. 112):

"And the Congress, in common with all branches of the Government, must exercise its powers subject to the limitations placed by the Constitution on governmental action, more particularly in the context of this case the relevant limitations of the Bill of Rights."

See also *Wolf v. Colorado*, 338 U. S. 25, 27; *Rochin v. California*, 342 U. S. 165, 169; *Anti-Fascist Committee v. McGrath*, 341 U. S. 123, 173-4.

(2) On February 18, 1958,—over four months before the petitioner's interrogation by the McClellan Committee on June 27, 1958,—he and two other persons (Frank M. Chapman and O. William Blaier) were indicted in the State of Indiana, County of Marion, on two felony counts.

The Committee marked this indictment as Exhibit 47 (76, 85, 179-186). At the trial it became "Government's Exhibit No. 47" (85, 179-186).

The first count of this indictment was for a continuing "conspiracy." It charged that in Marion County, Indiana, and on or about May 1, 1956, the three defendants had conspired with the purpose of bribing Harry Doggett, Assistant Director, Right of Way Department of the State Highway Department of Indiana, by promise of "one-fifth ($1/5$) of all profits thereafter received" by them or any of them from "any and all grants or conveyances of rights of way by the defendants, or any of said defendants, to the State of Indiana across real estate owned by the defendants, or any of them, in the State of Indiana;" that "thereafter, pursuant to and in furtherance of the aforesaid conspiracy," Doggett exercised official action for the acquisition of rights of way across lands owned by the defendant Chapman in Lake County and by the defendant Blaier in Wayne County, Indiana; and that Doggett was paid as his one-fifth sums totalling \$15,800.

This alleged "conspiracy" was described as a continuing one. The count did not allege a time limit or that it had terminated.

The second count of the indictment charged the substantive offense of paying to Doggett \$10,000 on or about December 17, 1956, as such a bribe.

The acts thus charged were wholly personal and related to lands owned individually. The United Brotherhood of Carpenters was not mentioned.

Each count of the indictment charged a felony under the law of Indiana, punishable with imprisonment for not less than two years nor more than fourteen years, plus a fine. (Burns, Indiana Criminal Code, §§10-601, 10-1101.)

(3) Concerning what thus came to be spoken of by the Committee as "the highway scandal" (69, 76, 51), the Committee opened its public inquiry on June 26, 1958, with five witnesses, including Blaier, a co-defendant in the Indiana indictment; and continued it on June 27 with Mr. Hutcheson, this petitioner (13, 86, 88).

Throughout these interrogations on June 26, the petitioner and Mr. Howard Travis, a member of the Indiana bar and counsel for the petitioner and Blaier both before the Committee and for the trial of the Indiana indictment, were continuously present (8, 74, 75, 88-9).

In opening on June 26 the Committee's chairman and counsel publicly made the following formal statement of "background information" "so that there will be no doubt as to the subject matter being inquired into" with the ensuing witnesses (18-20):

"Mr. Kennedy: Mr. Chairman, could I read a short statement in background of this situation to clarify it?

The Chairman: So that there will be no doubt as to the subject matter being inquired into, and so that the witness may be so apprised, you may read some background information, not as testimony, but upon which to predicate further testimony.

Mr. Kennedy: In May and June of 1957, hearings were held before the Gore committee, concerning the purchase of land along a proposed right-of-way in Lake County, Ind., by certain individuals, including Frank Chapman, who was the general treasurer of the Carpenters International.

The Chairman: Is that a right-of-way for a highway for a public highway?

Mr. Kennedy: That is correct. And the purchase that was being looked into was the purchase that was made in June of 1956.

Involved in this situation, along with Chapman, were Maurice A. Hutcheson, general president of the

Carpenters, and O. William Blaier, second general vice president. Within several months after the purchase of the land, it was sold to the State for the highway at a \$78,000 profit on a \$20,000 investment.

Part of the proceeds of the profits were allegedly paid by Chapman to the Indiana Highway Commission, and a deputy in the right-of-way office of the Indiana Highway Department.

Hutcheson, Blaier and Chapman invoked the fifth amendment before the Gore committee on this matter. This whole situation was presented to the Lake County grand jury by Metro Holovachka, the county prosecutor, commencing July 22, 1957.

The grand jury recessed on July 23, and thereafter considered the matter for an additional day on August 19, 1957.

Hutcheson, Blaier and Chapman did not appear before the grand jury because Holovachka did not subpoena them, or could not. On August 20, 1957, Holovachka announced that no indictments of the Carpenters' officials as well as others involved would be forthcoming because 'A lack of jurisdiction.' Moreover, through an attorney whom Holovachka refused to identify, the Carpenters' officials made restitution to the State of the \$78,000 profit made on the deal.

Subsequently, Mr. Chapman, these three individuals as well as certain of the State officials, were indicted in an adjoining county, Marion County, in the State of Indiana on this deal.

We are inquiring into the situation in connection with the presentation before the grand jury in Lake County, Ind.; the intervention by certain union officials into that matter, and the part that was played by Mr. Hutcheson himself, Mr. Sawochka, the secretary-treasurer of local 142 of the Teamsters, and Mr. James Hoffa, the international president of the Teamsters.

The Chairman: Is there some information that either union funds were used in the course of these transactions or that the influence of official positions of high union officials was used in connection with this alleged illegal operation?

Mr. Kennedy: We have information along both lines, Mr. Chairman, not only the influence but also in connection with the expenditure of union funds."

Thus both the Chairman and Mr. Kennedy made crystal clear in their very first public examination of a witness that "the deal" which was the subject of both the Marion County indictment's two counts and the Lake County grand jury investigation and hence of the alleged "conspiracy" to corrupt that investigation, intertwined and predicated *common factors*, to wit, the alleged real estate "deal" which was the subject of the indictment and was effected by the charged bribery; the alleged illicit "profits" therefrom; the alleged "bribe" to the Deputy of one-fifth out of the alleged "profits"; the alleged "conspiracy" to forestall indictment; the "restitution to the State of the \$78,000 profit made on the deal"; and the ensuing indictment.

(4) The five witnesses called on June 26 were Raddock, Sawochka, Johnson, Jr., Sullivan and Blaier, all of whom were presented and interrogated as playing parts in the highway "deal" set forth in the "background statement", particularly "in the restitution of the \$78,000 to the State of Indiana",—namely, the alleged "profits" of the alleged bribery (35, 47, 51-2, 67-9, 80). All five witnesses refused to answer on constitutional grounds except that Sullivan based refusal on attorney-client relationship. He denied knowing the petitioner (67).

(5) Blaier, the final witness on June 26, was accompanied by Mr. Howard Travis of the Indiana bar, who was

also defense counsel for him and the petitioner in the matter of the Indiana indictment (74).

Mr. Travis urged that interrogation of Blaier as to the subject matter of the "background statement" would involve his Indiana indictment and be an intervention by the Committee in its prosecution. Chairman McClellan thereupon announced the following ground rules to govern the interrogation (75):

"The Chairman: All I can say is that we will go into anything within the jurisdiction of this committee, about which we think the witness may have information, and can give testimony regarding except where, even though the committee may be interested in it, the matter may be covered by our jurisdiction, and would be clearly within the purview of these hearings, if the witness is under indictment for the offense for which he was indicted, we shall not interrogate him about that.

If he feels that might jeopardize his defense, we recognize that, where he is under indictment he should not be compelled to be a witness against himself on the subject matter involved in the indictment. That rule or policy will be observed.

Proceed with the interrogation and we can rule upon anything that comes up."

When, notwithstanding this assurance by the Committee of the "rule or policy" to be observed by it, it continued to press Mr. Blaier as to the presupposed conspiracy to prevent indictment of himself and the petitioner in the highway matter, and the indictment itself had been marked as Committee Exhibit 47 (76, 85, 179), Mr. Travis consistently protested. For example (82):

"Mr. Travis: No, sir. The indictment is in two counts. One is a conspiracy to commit a felony, to wit, bribery of a State official. I wish to say at this time

that it is my responsibility as attorney for this gentleman in the case under which he is under indictment, to advise him whether or not I think the questions which Mr. Kennedy is asking and is going to ask with regard to Lake County could be used in that prosecution, and my responsibility will be carried out by advising the witness to answer no questions."

And again (75):

"The matters that have been inquired about today in the hearing relate, to my mind, directly to the matters, to the transaction, for which he is indicted."

In overruling these protests the Chairman of the Committee nevertheless said (83, 84):

"The Chairman: *It may be a borderline case. I am unable to determine it at this time. . . .*

The Chairman: The Chair finds that the indictment is for alleged actions in 1956 that the crimes charged under the indictment took place.

This is something like a year later. If you want to exercise your privilege, that is all right. But I do not know how this could be related to an offense that was committed a year earlier. *It could be by indirection*, but certainly not directly, if the indictment is anywhere near accurate.

Mr. Travis: Indirection, Mr. Chairman, can be just as harmful as a direct matter." (Emphasis ours.)

Mr. Blaier thereupon followed the advice of his counsel and refused to answer. His counsel stated that Blaier did not "rely on the fifth amendment" but on "other guarantees that a man under indictment has, including the due process-of-law clause, that he must be tried only before the court where the indictment is pending" (88, 89).

(6) Mr. Travis was right in his contention that the alleged conspiracy to prevent indictment could be matter admissible at the trial of the pending indictment, both substantively, on cross-examination and in rebuttal of any defense.

Certainly the alleged restitution of the \$78,000 charged to have been the illicit "profits" of "the deal" averred in the indictment could be central in the prosecution's case.

A conspiracy to prevent indictment for a criminal conspiracy or other crime predicates the latter, presupposes a prosecutable case, links the two together in both phrasing and substance, is part of the *res gestae* and is probative of motive, intent and a guilty state of mind and purpose. Hence, under both federal and Indiana law, evidence of it and of circumstances indicative of it are available to the prosecutor on direct, in rebuttal and on cross-examination of the defendant. (*Connelly v. United States*, 249 F. 2d 576, 588, cert. den. 356 U. S. 921; *Keesier v. State*, 154 Ind. 242; 56 N. E. 232 (bribery and intimidation); *Eacock v. State*, 169 Ind. 488, 82 N. E. 1039 (use of money); *Perfect v. State*, 197 Ind. 401, 141 N. E. 52 (manufacture or suppression of evidence); *State v. Torphy*, 217 Ind. 383, 28 N. E. 2d 70; and *Wilson v. State*, 222 Ind. 63; 51 N. E. 2d 848 (flight, concealment, false name); *Conway v. State*, 118 Ind. 482, 21 N. E. 285 (attempted suborning of witness).)

These principles are applicable *a fortiori* where, as here, the conspiracy alleged in the Indiana indictment is charged as continuous and no termination or abandonment is alleged.

The Committee's stated opinion that because the alleged conspiracy to prevent indictment was supposed by it to have occurred after what, in the Committee's unsupported opinion, would be the completion of the offenses charged in the indictment, such alleged conspiracy would be unrelated and irrelevant to the indictment, was erroneous in law and could not bind the Indiana courts or protect the petitioner from the consequences of their contrary rulings. (See pp. 16-18, *supra*.)

(7) The public interrogation of the petitioner on the highway "deal" immediately followed on the next day (June 27).

The petitioner was accompanied by his counsel, Mr. Howard Travis of Indianapolis. He answered all questions except those which in the opinion of Mr. Travis had a bearing on "the road situation".

Mr. Travis stated that Mr. Hutcheson would not claim the Fifth Amendment's privilege against self-incrimination but would claim the rights of a man under indictment, "including the due-process-of-law clause, that he must be tried only before the court where the indictment is pending" (88, 89, 90, 94, 122-3, 126, 131-2). Mr. Travis further said (89):

"I submit, therefore, that any inquiry by this committee into or about any of the facts related to or which might be related to such indictment and the transactions recited therein, however remote the same may be, and whether occurring before or after the transaction recited in the indictment, or as to any matter which might be attempted to be used in furtherance of the prosecution thereof, would be improper, without appropriate pertinency and outside the scope of the investigation which this committee is authorized to make."

The Chairman ruled (94):

"As to any act covered in the indictment for the period of which the crime is alleged in the indictment, he [Mr. Hutcheson] will not be interrogated. But the matters that he will be interrogated about are subsequent to the time that the offense in the indictment was charged."

The petitioner was then asked a series of questions reflecting by dates, names, places and data the "background

information" stated by the Committee the day before as "the subject matter being inquired into" (18).

Most of the questions related to a supposed trip by the petitioner to Chicago on August 12 and 13, 1957, and to his contacts at that time with persons named or indicated in the "background statement".

Among such questions so addressed to the petitioner were questions as to whether he "did engage the services of Mr. Raddock and pay him for those services out of union funds to contact, either directly or indirectly, the county prosecuting attorney, Mr. Holovachka, given name Metro, in Lake County, Gary, Ind." (124-5); whether he knew "Mr. Sawochka, of the Brotherhood of Teamsters" (147); whether he "had Mr. Plymate, who is a representative of the Brotherhood, telephone, and your secretary telephone, Mr. Sawochka from your room on August 13, 1957" (147); whether he "did have any business with local 142 of the Teamsters in Gary, Ind." (149); whether it was "a fact that you telephoned Mr. Hoffa from your hotel in Chicago on August 12, 1957" (146); whether he (the appellant) was "out in Chicago at the same time" (144); whether that "telephone call (was) in fact paid out of union funds" (147); whether he knew Mr. James Hoffa (146); whether he had "paid Max C. Raddock out of union funds for personal services rendered to you at any time within the past 5 years" (127).

All these questions, and those which they example, related directly to the "background information" or comprehended it in their generality (18-20). They now constitute separate counts in the instant indictment (2A-4).

In the course of this questioning, Mr. Travis said (131-2):

"I hope you realize, Senator, it is a very delicate question for me and a very heavy responsibility. But, knowing what I do about the matter under which he is indicted, I have to exercise my judgment as best I can. . . ."

"Of course, I think any man under indictment guaranties of due process of law should not be questioned in any form concerning any matter that might remotely in any way aid the prosecution in that case.

Naturally, this committee can't sit as prosecutors or judges or jurors in that matter under which Mr. Hutcheson is indicted.

I think there are fundamental guarantees to any person under indictment that that matter shall be tried solely in the forum where the indictment lies."

(8) The advice and statements by Mr. Travis were patently in good faith and in honest discharge of a grave professional responsibility in the matter of the Indiana indictment.

The petitioner followed the advice of his counsel as to the relation of the questioning to the case against him in Indiana. As a layman he could not do otherwise. (*Chandler v. Fretag*, 348 U. S. 3, 10.)

(9) We submit that this consistent effort of the Committee, beginning with its "background statement", its public interrogation in development thereof, and its final nationally publicized pronouncement of guilt (151), to present publicly a preview and pre-trial of the Indiana case against the petitioner, and to pillory him with legislative denunciation in anticipation of his Indiana trial, constituted illicit interventions therein and basic violations of the petitioner's rights in due processes of law.

No court needs reminder that due process of law is primary among all the constitutional guaranties confining the Government to government by law and protecting the individual from arbitrary governmental procedures.

Nor does any court need reminder that "fairness of procedure" constitutes "due process in the primary sense" (*Anti-Fascist Committee v. McGrath*, 341 U. S. 123, 161;

Watkins v. United States, 354 U. S. 178, 206, 214; *MacKenna v. Ellis*, 263 F. 2d 35, 43); or that "fundamental unfairness" is a violation of due process of law (*Blackburn v. Alabama*, 361 U. S. 199, 206; *United States v. Peck*, 154 F. Supp. 603, 610, Youngdahl, J.; *United States v. Cross*, 170 F. Supp. 303, 306, Keech, J.); or that "the essence of due process" is "the sense of fair play,"—"our American ideal of fairness" (*Bolling v. Sharpe*, 347 U. S. 497, 499; *Galvan v. Press*, 347 U. S. 522, 530).

POINT II

When in accordance with its "background statement" the Committee attempted a public preview and virtual pre-trial of the Indiana case, the petitioner was entitled to the same due processes of law as would be his rights in the Indiana prosecution itself.

As in the case of *Delaney v. United States*, 199 F. 2d 107, 115 (C. A. 1), the Committee ignored the "difference between a legislative public hearing prior to indictment, and one where trial is impending under an existing indictment".

That decision is the more in point because there the indicted person was not also the witness and was never interrogated.

Where the witness is under an existing indictment, he is already in the hands of the executive and judicial departments of the nation or state as the case may be, and he is entitled to the due processes and protections of law as administered by such judicial branch, which, as said in the above *Delaney* case, is "charged with the duty of assuring the defendant a fair trial before an impartial jury," and of determining "guilt or innocence solely on the basis of evidence to be presented at the impending trial" (p. 114). The matter is then *sub judice*.

A Congressional Committee which includes in its announced subject matter of inquiry the indictment pending against the witness, the factual matters alleged in and constituting its charges, and other matters which would be relevant to or in aid of the proof thereof, is in effect undertaking to anticipate and invade executive and judicial prerogatives and duties, and the rights of the witness to their exclusive exercise thereof. Such is the very essence of due process of law.

To quote again from the *Delaney* case, *supra* (199 F. 2d 107, 110):

"In this respect the committee hearing afforded the public a preview of the prosecution's case against Delaney without, however, the safeguards that would attend a criminal trial."

The verdict which the Committee by its news release publicly rendered in the highway matter as the petitioner was leaving the stand was in the nature of a bill of attainder,—a pronouncement of guilt by legislative action and without judicial trial (151).

POINT III

The Committee's own ground rules limiting inquiry as to matters touching the Indiana prosecution confronted the petitioner as a witness with confusions, dilemmas and avowedly borderline fields, devoid of unmistakable clarity and necessitating reliance on his Indiana counsel's advice as to the possible consequences in the Indiana prosecution.

During the interrogation of the preceding witness (Blaier), who was also a defendant in the same Indiana indictment and was also being defended by the same Mr. Travis of the Indiana bar, Senator McClellan laid down

the "rule or policy" that the Committee would not interrogate "for the offense for which he was indicted", and that if he (the witness) "feels that might jeopardize his defense", the question would not be pressed (75).

Hence, as to the questions refused, the petitioner (a layman) was confronted with dilemmas and confusions which were beyond his competence to resolve and involved ensuing basic differences of opinion between the Committee and his counsel as to what questions might have direct or indirect relation to the Indiana charges, or "might jeopardize his defense", and as to what, under the law of Indiana, the Indiana prosecutor or Indiana court might deem related or relevant evidential matter. (See p. 18, *supra*.)

This dilemma and confusion were worsened for the petitioner by the fact that, when Mr. Travis expressed his concern and opinion that the Committee was in effect violating its own "rule or policy", the Chairman stated that "*it may be a borderline case*" and could be related to the Indiana case "*by indirection*" (83, 84).

Neither the petitioner nor the Committee could make decisions for the Indiana prosecutor or court, or could bind either in any way.

Thus, the Committee, after inviting the petitioner to rely on the very limitations which it set for itself as a "rule or policy", nevertheless confronted the witness by these questions with subject matter of inquiry that was pregnant with dilemma, confusion and dispute, and was utterly beyond his competence as a layman, and beyond the competence of the Committee itself, to decide and conclude.

Thus the questions were utterly devoid of that "unmistakeable clarity" essential to a conviction where the investigating authority by resort to the criminal process administered by the federal judiciary makes operative the safeguards of criminal justice.

Hence in the extraordinary circumstances into which the petitioner was thrust by the Committee, guidance by the advice of his counsel who had the responsibility for

his defense in Indiana could not constitute a criminal contempt in law, or indeed in fact beyond a reasonable doubt. (Cf. *Watkins v. United States*, 354 U. S. 178; *Sacher v. United States*, 356 U. S. 576.)

POINT IV

The fact that some of the questions here involved coupled with their circumstances reference to the use of union funds, in no way lessened their relevancy in the prosecution and trial of the Indiana indictment and hence in no way annulled the legal bases of the petitioner's refusals to answer.

All the eighteen questions listed in the indictment had as avowed "background" and as the announced guide to their meaning and application, the "information" which the Committee embodied in its introductory description of the "subject matter being inquired into" on June 26 and 27, 1958, concerning the so-called Indiana highway matter (18-20). (See pp. 13-15, *supra*.)

That "background statement" climaxed with the Committee's assertion of "information" that "union funds were used in the course of these transactions" (20).

Since "these transactions" constituted subject matter capable of use in the prosecution and trial of the Indiana indictment, the alleged use of union funds therein did not make compulsory on the petitioner questions which otherwise would not have been compulsory as against the objections stated by his counsel. (See p. 18, *supra*.)

Turning accordingly to the questions listed in the indictment tried in this action (2A), we see that they pose the same names as the "background statement" totalizing "these transactions"; and relate to a supposed trip by the petitioner to Chicago on August 12 and 13, 1957, and his

contacts therefrom with the persons so named,—contacts which (if they occurred for the purpose described in the “background statement”) would be relevant in aid of the prosecution of the Indiana indictment. (See pp. 13-15, 18, *supra*.)

Questions 1, 2, 4 and 5 have as included subject matter these same “transactions”, for they expressly name Max C. Raddock who, by question 3, is identified as supposedly having been engaged to have “contacts, either directly or indirectly” with “the county prosecuting attorney, Mr. Holovachka, given name Metro, of Lake County, Gary, Ind.” and to have been paid therefor “out of union funds”.

This identification by question 3 of Raddock with these supposed “contacts” is implicit in the more generalized questions 1, 2, 4 and 5; and could reasonably be so understood by the petitioner and his counsel, Mr. Travis. The generalization in question 4 about “the past five years”, was merely another way of again putting, under guise of a generalized inclusion, question 3.

The use in question 2 of the words “unrelated to this offense charged in the indictment now against you” was merely a reflection of the Committee’s mistaken and highly confusing opinion that the alleged conspiracy to prevent indictment in Lake County was “unrelated” to the continuing conspiracy to bribe charged in the subsequent Marion County indictment, because according to the view of the Committee the latter conspiracy was earlier (82-4).

A conspiracy to prevent an indictment for a continuing criminal conspiracy predicates by its very terminology and substance the fact, substance and criminal objective of the latter.

Relevancy to the Indiana prosecution would be the consequence of the acts done and of the objectives of such acts. It would not be affected by whether such acts were paid for or not, or whether, if they were paid for, they were paid out of union funds.

Hence, we submit that whether or not, the use of union funds was within the inquisitorial power of the Committee, the inclusion of such supposed use in some questions listed in the instant indictment in no way annulled the constitutional and legal rights on which the petitioner stood on the advice of his Indiana counsel.

POINT V

There was basic error in the premise and holding below that the Self-Incrimination Clause of the Fifth Amendment "is the only way he (the petitioner) could properly seek it (relief from interrogation) before a committee of Congress" (172).

By this restriction of the petitioner to this single resort, the court below effectually denied him the total rights to which as a witness then under felony indictment and awaiting trial he was entitled.

For many reasons a plea of self-incrimination, accompanied by nationwide publicizing from the Committee, would have gravely prejudiced the petitioner's right to a fair and impartial trial.

(1) In *Emspak v. United States*, 349 U. S. 190, the Supreme Court noted (p. 194) the acknowledgment in the Government's own brief of "the popular opprobrium which often attaches to its (the Self-Incrimination Clause's) exercise"; and itself noted its own recognition (p. 195) that "in these times a stigma may somehow result from a witness' reliance on the Self-Incrimination Clause." In *Ullmann v. United States*, 350 U. S. 422, 426, the Supreme Court deplored that: "Too many, even those who should be better advised, view this privilege (against self-incrimination) as a shelter for wrongdoers." See also *Slochower v. Board of Education*, 350 U. S. 551, 557.

(2) This very Committee had on the preceding day repeatedly shown itself ready and quick to make and publicize as *opprobrious* and as indicative of guilt, *even by the petitioner*, resorts to this Self-Incrimination Clause by preceding witnesses in connection with this identical "subject matter being inquired into."

Thus, when Raddock, the first witness interrogated on this subject matter, resorted to the Self-Incrimination Clause, the Chairman was quick to publicize it as proof of criminality on the part not only of Raddock *but also of this petitioner* and others (33):

"The Chairman: In this instance, I gather the impression from this background information and from your attitude about it, there was a conspiracy between those of you who were pursuing this project to obstruct justice, to prevent indictments being found against Mr. Hutcheson, Mr. Chapman and Mr. Blaier. Is that a correct assumption?"

And again (29):

"The Chairman: I am compelled, and I think everyone who listens or who may read this transcript is *compelled*, to the conclusion that you (Raddock) are being truthful at least about taking the fifth amendment, and that if you did tell the truth, it might tend to incriminate you, *and also those of the union who are responsible* for and who authorize the services you performed." (Emphasis ours.)

The Chairman even asserted it to be "a reflection upon the management of that union" (the Brotherhood of Carpenters of which the petitioner was the General President) (28), and as establishing "a very sad situation" (28), and as thwarting the aim of the Committee "to expose those who may have engaged in criminal acts" (21).

Certainly this petitioner, when cast in the role of the ultimate target of the announced "subject matter being inquired into," was not compelled to subject himself by a plea of self-incrimination to such unconstitutional and defamatory pillorying and prejudicing in advance of trial, or to hear himself as a consequence denounced from the high national rostrum occupied by this Committee as one who thereby and out of his own mouth "compelled" the conclusion of the guilt of himself and others.

(3) Furthermore, if the petitioner had resorted before the Committee to a plea of self-incrimination, such resort by him could be the subject of adverse inference at his Indiana trial and of adverse cross-examination if he took the witness stand in his own defense. (*Raffel v. United States*, 271 U. S. 494, 497, 499; *Viereck v. United States*, 78 App. D. C. 279, 139 F. 2d 847, 851-2, cert. den. 321 U. S. 794, a decision by this Court citing many supporting decisions.)

The Government's brief in the Court of Appeals *conceded* (p. 26, footnote 8) that "under Indiana law" a plea of self-incrimination could "be the subject of adverse inference" if the petitioner "elected to take the stand on his own behalf at a subsequent trial."

All that was held in the decisions cited below by the Government was that such a plea would not in the subsequent trial create in law a *conclusive* presumption of guilt.

POINT VI

Moreover, a plea of self-incrimination, even if the petitioner had resorted to it, would not have been lawfully available in this Federal inquiry as regards the Indiana criminality charged upon "information" in the "background statement."

Such a plea is available only as to a charge or hypothesis of crime against the laws of the sovereignty conducting the inquiry or case.

The reason is that the Self-Incrimination Clause is separate from and not included in the Due Process Clause which by reason of the Fifth and Fourteenth Amendments is all-pervading and comprehensive throughout and over all sovereignties in the Union.

The Self-Incrimination Clause "did not form part of the 'law of the land' prior to the separation of the colonies from the mother country," and hence "is not a privilege or immunity of National citizenship." (*Twining v. New Jersey*, 211 U. S. 78, 99 *et seq.* and headnote; *Adamson v. California*, 332 U. S. 46, 52; *United States v. Murdock*, 284 U. S. 141, 148; *Marcello v. United States*, 196 F. 2d 437; *Knapp v. Schweitzer*, 357 U. S. 371; *Mills v. Louisiana*, 360 U. S. 230.)

Adams v. Maryland, 347 U. S. 179, cited in the Government's brief below, dealt not with a plea of self-incrimination, but with 18 U. S. C. §3486 which barred the use in all courts of certain testimonies.

POINT VII

The practical effect of the petitioner's conviction was to impair and disallow his constitutional and common law rights to the assistance and protection of counsel in connection with the prosecution and trial of the Indiana case.

The petitioner followed the advice of his Indiana defense counsel that the subject matter being inquired into according to the Committee's definitional announcement was capable of being availed of in the prosecution and trial of the Indiana indictment.

Since the petitioner had no competence to dispute such advice, and since the Committee had no competence to bind the Indiana Court, the practical effect of the Committee's interrogation and citation for contempt was to deny to him in the preview and pre-trial of the Indiana case attempted by the Committee the protective rights which his counsel would have in the prosecution and trial of the Indiana case.

Part of the "essence of due process" is the right of an indicted person "to have the assistance of counsel for his defense",—a right so deeply imbedded in due process that it is expressly guaranteed by the Sixth Amendment and is "too fundamental and absolute to allow courts to indulge in nice calculations as to the amount of prejudice arising from its denial". (*Glasser v. United States*, 315 U. S. 60, 69, 70, 76; *Powell v. Alabama*, 287 U. S. 45.)

The Sixth Amendment and the common law include the right of a person under indictment jeopardizing life or liberty to the untrammelled assistance of counsel at every stage and in all matters which concern his defense. (*Chandler v. Fretag*, 348 U. S. 3, 10; *Snyder v. Massachusetts*, 291 U. S. 97, 106.)

POINT VIII

The contention that the petitioner's reliance on advice of counsel is irrelevant, disregards the fact that this particular advice ran not to relevancy to the subject matter of the inquiry, but to the relevancy of the subject matter to the pending Indiana prosecution of the petitioner.

(1) At page 20 the Government's brief below said:

"The fact that appellant relied on the advice of his counsel in refusing to answer does not constitute a defense under 2 U. S. C. 192."

This statement disregards that *the particular advice* here involved was not advice as to the pertinency of the questions to the subject of inquiry, but rather was advice as to their pertinency in and to the Indiana prosecution, and that such advice was given by the petitioner's Indiana counsel charged with responsibility for his defense.

(2) As to such pertinency there can be no dispute. (See pp. 13-15, 18, *supra*.)

Take, for example, the matter described in the "background statement" of the Committee by the words (18, 19):

"The Carpenters' officials made restitution to the State of the \$78,000 profit made *on the deal*."

This alleged "restitution" was of the amount central to both counts in the indictment,—the amount charged therein to have been the illicit objective and gain and to have measured on a one-fifth scale the total sum charged in the first count to have been paid in bribery.

(3) The matter of the pertinency of the questions in relation to the Indiana indictment and its prosecution was

a subject as to which the petitioner, as a layman, could have no knowledge.

Such pertinency ran to matters of law which were solely within the competence of lawyers and judges; which were for the Indiana court whose exclusive judicial prerogative and jurisdiction had already attached; which the petitioner, as a layman, had no conceivable means of determining; and which the Committee itself had no power or competence to conclude or forestall by any opinion it might entertain or express.

Indeed, even the Committee recognized the probability of *that* pertinency, for its Chairman acknowledged that "it may be a borderline case" and relate "by indirection" (83, 84).

The witness (the petitioner) cannot be penalized criminally because of an ambiguity and dilemma which the Committee itself acknowledged and created and which he was in no position to resolve. (*Quinn v. United States*, 349 U. S. 155, 166.)

(4) Hence, in taking the advice of his counsel as to such relations, the petitioner was fully justified. Indeed he could do nothing else.

In no sense can he be deemed to have had the wilful or criminal intent necessary to conviction in this case, or to have been "capricious and arbitrary", or to have been guilty of "wilful, unjustified obstruction of a legitimate legislative function". (*Quinn v. United States*, 349 U. S. 155, 165; *Emspak v. United States*, 349 U. S. 190, 202; *Watkins v. United States*, 354 U. S. 178; *Sacher v. United States*, 356 U. S. 576; *United States v. Kleinman*, 107 F. Supp. 407, 408.)

The distinctions between the present case and *Sinclair v. United States*, 279 U. S. 263, cited by the Government below, are (1) in *Sinclair* no indictment and its constitutional consequences were involved; and (2) in *Sinclair* the witness' refusal was on the ground of irrelevance under the statute delimiting the Committee's authority.

POINT IX

As to the petitioner, a witness then under indictment, the Committee neither had nor could have power "to search out and find if crime had been committed"; or to act "to assist and help law enforcement officials in the State of Indiana"; or to pressure them to "further exposure" of the petitioner; or to invade subject matters which were exclusively for the executive or judicial branch of government in Indiana or elsewhere; or to pillory and smear the petitioner in advance of trial with nationally publicized accusations and pronouncements of criminality.

For these reasons also the Committee was invading the rights of the petitioner to due processes of law.

(1) The petitioner did not lose his rights to due processes of law under the Fifth and Sixth Amendments and the common law upon being called before the Committee to give public testimony. (*Watkins v. United States*, 354 U. S. 178, 188; *Barenblatt v. United States*, 360 U. S. 109, 112; *Wolf v. Colorado*, 338 U. S. 25, 27.)

When an indictment has been filed with the court, the subject matter comes under the jurisdiction of the judicial branch of the government and becomes the exclusive concern of that branch and of the executive branch. The accused therefore becomes vested with all those constitutional rights which in consequence are within the wide embrace of due processes of law under constitutional guarantees and the common law.

Watkins v. United States, 354 U. S. 178, 187;
Barenblatt v. United States, 360 U. S. 109, 111-2;
Greene v. McElroy, 360 U. S. 474, 507;
Delaney v. United States, 199 F. 2d 107, 110, 114-5;
Baker v. Hudspeth, 129 F. 2d 779, 781, cert. den.
 317 U. S. 681.

(2) This record shows, we submit, that the Committee and its counsel so prepared and worded its initial and dramatic public announcement of "the subject matter being inquired into" (18-20) as to include the Indiana indictment and its contents, "the deal," the illicit "profits" therefrom and the corrupt use thereof which that indictment charged; the alleged criminal "conspiracy" to prevent indictment for "the deal"; implementation of "the conspiracy" by the "restitution of the \$78,000 profit made on the deal" charged in the indictment; and alleged participations by the petitioner in all such criminal acts. ¶

This record further shows, we submit, that the Committee and its counsel thereafter conducted the interrogation of the petitioner in sensational and highly publicized exploitation of this announcement "as to the subject matter being inquired into," and in such wise as grossly to prejudice, pre-try and publicly pillory the petitioner and infer his guilt in advance of his trial; and that the Committee concluded its interrogation by publicly and effectually accusing him of committing crime against Indiana as therein alleged, by offering to assist Indiana law enforcement officials in prosecuting him therefor, and by pressuring them with admonition that "further exposure should be made" (151).

This record also shows that at the trial the Chairman of the Committee reaffirmed these purposes and objectives and defended them by testifying that "our legislative purpose is to search out and find if crime has been committed," and that, in furtherance, "if the state officials desired to pursue any testimony that we had developed, we would cooperate with them and make the record available to them" (163).

We protest these assertions of power and purpose, and the manner and methods by which they were exercised and exploited, as beyond the Committee's authorization and constitutional and statutory power; as illicit invasions and derogations of rights and duties reserved to the execu-

tive and judicial branches of government and to the sovereign State of Indiana; as publicly pillorying, smearing and pre-trying the petitioner in advance of his Indiana trial; as denying him due process of law and his constitutional rights to a fair, impartial and unprejudiced trial and to the protection of counsel; and, as a consequence, rationalizing and justifying the course taken by the petitioner and his counsel throughout the interrogation, and demonstrating the absence of the required criminal intent or of its proof beyond a reasonable doubt.

The Committee, we submit, departed from the legitimate scope of legislative inquiry to intervene in a specific prosecution of a single individual in a manner affecting adversely, and intended to affect adversely, his capability to defend himself.

Conclusion

This case presents important basic questions of law not heretofore determined by this Court. We urge that the petition be granted.

Respectfully submitted,

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APPENDIX**Text of the Fifth and Sixth Amendments****ARTICLE [V]**

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

ARTICLE [VI]

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

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In the Supreme Court of the United States

OCTOBER TERM, 1960

No. 701

MAURICE A. HUTCHESON, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA
CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The *per curiam* opinion of the court of appeals (R. 188) is not reported.

JURISDICTION

The judgment of the court of appeals was entered on December 7, 1960 (R. 188). A petition for rehearing was denied on January 9, 1961 (R. 199). The petition for a writ of certiorari was filed on February 7, 1961. The jurisdiction on this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether petitioner, who unequivocally disclaimed reliance upon the privilege against self-incrimination, was entitled to refuse to answer pertinent questions of a congressional committee because his testimony might relate to a state prosecution against him.

2. Whether the committee's questions and directions to answer were sufficiently clear to support petitioner's conviction for contempt based on his refusal to answer.

3. Whether petitioner's refusal to answer was excused because he acted on advice of counsel.

STATEMENT

Having waived a jury trial (R. 1), petitioner was convicted in the United States District Court for the District of Columbia on an eighteen-count indictment charging violation of 2 U.S.C. 192, in that he had refused to answer eighteen questions put to him by the Senate Select Committee on Improper Activities in the Labor or Management Field (R. 2a-4, 172-173). He was sentenced to six months' imprisonment and to pay a fine of \$500 (R. 186-187). The court of appeals affirmed the judgment.

The pertinent evidence adduced at the trial may be summarized as follows:

On January 30, 1957, the Select Committee was authorized by the Senate to conduct an investigation into criminal or improper practices in labor-management relations (R. 174). In 1958, petitioner, the president of the United Brotherhood of Carpenters (hereinafter called the Union), Frank Chapman, the Union's general treasurer, and O. William Blaier, its

second general vice-president, were indicted in Marion County, Indiana, for conspiracy to bribe, and bribery of an Indiana highway official to approve the state's purchase of a right-of-way over certain land owned by them (R. 179-186).

At the opening of public hearings on June 4, 1958, the chairman stated that the committee had heard a great deal of testimony regarding the misuse of union funds by union officials, and that the committee was still pursuing that subject. As part of the investigation, he said that the committee would investigate, *inter alia*, financial transactions between the Union and one Maxwell Raddock, a businessman (R. 9-10, 157).

Petitioner stipulated that on May 20, 1958, he had been served a subpoena requiring his appearance before the committee on June 2, 1958, and that, by agreement with the committee, the return date was changed to June 26. Petitioner was present on that date, as well as on June 27, the date he was called as a witness (R. 8).

On June 26, after Raddock, who was then the witness, had invoked his Fifth Amendment privilege against self-incrimination as to certain questions (R. 15-18), committee counsel disclosed some "background information," to avoid any "doubt as to the subject matter being inquired into, and so that the witness [Raddock] may be so apprised * * *" (R. 18). This information was that, in the summer of 1957, funds of the Union and the influence of certain labor union officials had been employed to frustrate petitioner's indictment in Lake County, Indiana, for bribery of a state highway official—the alleged

bribery which later became the basis for the indictment in neighboring Marion County. More specifically, the committee had information that, in June 1966, petitioner, Frank Chapman, and O. William Blaier had sold land to Indiana for a highway at a profit of \$78,000 on a \$20,000 investment; that part of the proceeds of this sale were allegedly paid by Chapman to the Indiana Highway Commission and a deputy in the right-of-way office of the Indiana Highway Department; that shortly after this matter had been put before the Lake County, Indiana, grand jury, in the summer of 1967, the county prosecutor, Metro Holovachka, announced that no indictments would be forthcoming because of "[a] lack of jurisdiction." Holovachka announced at that time that Union officials had made restitution to the state of the \$78,000 through a lawyer whom he refused to identify (R. 18-19).

Committee counsel then stated that the investigation was directed at determining the authenticity of the above information (R. 19-20). As the chairman put it, "the interest of this committee [is] * * * to ascertain again whether the funds or dues money of union members is being misappropriated, improperly spent, or whether officials in unions are using their positions to intimidate, coerce, or in any way illegally promote transactions where the public interest is involved" (R. 20). Following this explanation, Raddock again refused, on the grounds of the Fifth Amendment, to answer all questions concerning his activities in aborting the Lake County investigation (R. 21-22, 24-26, 40-41).

That same day, June 26, 1958, Michael Sawochka, Secretary Treasurer of the Teamsters Union, Local 142, Gary, Indiana, and Charles Johnson, president of the New York District Council of the Carpenters Union, each invoked the Fifth Amendment as to his role in the termination of the Lake County investigation (R. 44-48; 51-52). Joseph Sullivan, an attorney for the Teamsters Union in Gary, Indiana, invoked the attorney-client privilege as to similar inquiries (R. 54-73). O. William Blaier, the second general vice-president of the Union, and petitioner's co-defendant in the Marion County indictment, was then called as a witness. Before Blaier's questioning began, his counsel advised the committee that he would not answer questions concerning the subject matter of the indictment or matters relating thereto (R. 74-75). The chairman noted that, while the committee had jurisdiction, it would not interrogate the witness as to the subject matter of the Marion County indictment (R. 75). Thereafter, despite the chairman's ruling that particular questions did not relate to that indictment, but to later events dealing with the termination of the Lake County investigation (R. 82-84), Blaier persisted in his refusal to respond on the ground that his answers might be used against him in the prosecution of the pending indictment (R. 83). At one point the chairman indicated that Blaier could invoke his privilege against self-incrimination (R. 83-84).

Petitioner appeared for the first time in a testimonial capacity before the committee on the next day, June 27, 1958 (R. 86-87). At the outset, his

counsel assured the committee that petitioner would not resort to the "guarantees of the Fifth Amendment" (R. 88). Petitioner relied, in refusing to answer questions, on the claim that the committee was without authority to make any inquiry in any way relating to the matters covered by the Marion County indictment (R. 88-91). The chairman replied that any issue raised by counsel with respect to the committee's jurisdiction or the propriety of the questions would be ruled on as the issues arose (R. 91). After petitioner had been asked, and had answered, a series of questions concerning his career with the Brotherhood of Carpenters (R. 91-94), he was asked how long he had known Max Raddock. When his counsel inquired whether this related to the Lake County transactions (R. 94), the chairman stated that petitioner would be interrogated about "the use of union funds in a project which, on the face of it at least, appears to have the objective which was to obstruct justice," but that petitioner would not be asked about any act covered in the Marion County indictment (R. 94).

Petitioner was then asked the question which formed the basis of count one of the indictment—"Has he [Raddock] received from the union payments for acts performed in your behalf and for you as an individual" (R. 131). Petitioner refused to answer the question on the ground that the question related "solely to a personal matter, not pertinent to any activity which this committee is authorized to investigate, and also it relates or might be claimed to relate to or aid the prosecution in the case in which I am

under indictment, and thus be in denial of due process of law" (R. 122). The chairman ordered that petitioner answer, pointing out that the question was well within the jurisdiction of the committee, "to ascertain the conduct of this witness with respect to his position in a fiduciary capacity as trustee of union money" (R. 122). Petitioner persisted in his refusal to answer. Thereafter, on the same grounds, he refused to answer seventeen succeeding questions which make up the remainder of the counts in the indictment (R. 2A-4, 124-128, 134-135, 138, 143-149). The chairman of the committee pointed out several times that petitioner was not being interrogated concerning the subject matter of the Marion County indictment (R. 94, 123, 126-127, 130, 147). Senator Ervin said at the hearing: "We have repeatedly stated to Mr. Hutcheson, that we are not asking him to make any revelations about any circumstances that have any connection whatever with the indictment pending against him, but we are asking him about the use of union money under circumstances entirely disassociated from the matters out of which the indictment arises" (R. 130). Throughout the questioning, petitioner expressly disclaimed reliance upon the privilege against self-incrimination (R. 124, 125-126, 128, 133, 144-145).

ARGUMENT

1. Petitioner's primary argument is that he could, on due process grounds, refuse to answer those questions which might have disclosed information in some way relevant to the trial of the pending Indiana indictment, even though he unequivocally disclaimed re-

lience on the privilege against self-incrimination (Pot. 11-33, 25-37). Whether or not petitioner is correct in his view that the information solicited by the committee was relevant on the pending state charge, he is in error in asserting that he was justified for this reason in maintaining silence. If he chose not to rely upon the privilege, petitioner would have been justified in refusing to answer the committee's questions only if the committee had no power to ask them, or if the questions were not pertinent to the investigation that the committee was authorized to conduct. In *Hickair v. United States*, 370 U.S. 353, this Court made clear that a congressional committee can investigate matters which relate to pending criminal cases. There, the witness, having specifically alleged reliance upon the privilege against self-incrimination, refused to answer pertinent inquiries on the ground that the committee had no power to delve into matters relating to law suits in the federal courts in which the witness was a defendant. In rejecting the validity of this argument this Court said (*id.* at 355): "It may be conceded that Congress is without authority to compel disclosures for the purpose of aiding the prosecution of pending suits; but the authority of that body, directly or through its committee, to require pertinent disclosures in aid of its own constitutional power is not abridged because the information sought to be elicited may also be of use in such suits." Cf. *Barenblatt v. United States*, 350 U.S. 100, 125-126; *W. Whittaker v. United States*, No. 57, this Term, decided February 27, 1961.

The questions petitioner refused to answer were related to a valid legislative purpose and were perti-

nent to the subject matter under investigation. The Select Committee had been authorized by Congress to investigate improper practices or activities in the labor-management field and to determine if any changes in the law was required (R. 174, 177-178). Certainly, this is a valid legislative purpose. The questions which petitioner refused to answer were clearly within this grant of authority since they related to the issue of whether union funds were being spent to bribe state officials. The committee chairman, one of its members, and its counsel, all stated during the hearing, while petitioner was either testifying or at least present, that the purpose of the hearing was to discover whether union officials were abusing their position to spend union money for their own purposes (see the Statement, *supra*, pp. 3, 4, 6, 7). The fact that this information also related to a pending criminal indictment is not material. *Sinclair v. United States, supra.*¹

¹ *Delaney v. United States*, 199 F. 2d 107 (C.A. 1), relied upon by petitioner (Pgs. 22-23), does not aid him. In that case, after the defendant, a Collector of Internal Revenue for the District of Massachusetts, had been indicted for improper activity relating to the collection of taxes, a House committee instituted an intensive investigation into his, and other collectors', alleged dereliction. Many of the witnesses who appeared before the committee (the defendant was not called) had testified before the grand jury in the defendant's case, and the hearings afforded the public a preview of the prosecution's case. While the court of appeals held that due to this publicity the defendant had been entitled to a continuance of his trial, the court made clear that it was not challenging the power of the committee to conduct its investigation. The court said (*id.* at 114): "We mean to imply no criticism of the action of the King Committee. We have no doubt that the committee acted lawfully, within the constitutional powers of Congress duly delegated to it."

Petitioner argues that he could not properly invoke the privilege against self-incrimination since the questions related to a state charge. But, whether or not the committee could have disallowed the claim of privilege (cf. *United States v. Wardock*, 284 U.S. 141), it is plain that, as petitioner well knew, it would not have done so. Other witnesses called before the committee during this investigation while petitioner was present were allowed to claim the privilege in refusing to answer questions relating to the Lake County investigation. And Mr. Blaier, a co-defendant of petitioner's in the Marion County indictment, was specifically informed that he could exercise his privilege if he so desired (see the Statement, *supra*, pp. 3-5).

Petitioner also argues that he could not claim the privilege before the committee because that could be the subject of an adverse inference in his Indiana trial. But even if questions relating to the "fixing" of the Lake County indictment were, as petitioner claims (and contrary to the committee's views), relevant to the charges in the Marion County indictment, his refusal to answer the questions on grounds other than the privilege would be equally relevant. Moreover, petitioner's refusal to answer on other grounds removed any problem as to what inferences can properly be drawn from a claim of privilege under the Fifth Amendment. Cf. *Grunewald v. United States*, 353 U.S. 391, 415-424. And petitioner never informed the committee that he desired to invoke the privilege but was afraid that it would be used against him on a later trial. On the contrary, he unequivocally dis-

claimed reliance upon it. His present claim is thus a mere afterthought. It is an attempt to obtain the benefits of the privilege without asserting it.

2. There is no merit in petitioner's claim (Pet. 23-25) that, since the committee had ruled that it would not interrogate him concerning the subject matter of the Marion County indictment, the questions and directions to answer lacked the clarity necessary to support a contempt conviction. While it is true that the chairman stated that the committee would not inquire about the Marion County indictment, he repeatedly made clear that the committee would inquire as to acts occurring subsequent to the activities underlying the indictment which related to the use of union funds and the activities of union officials to abort the Lake County investigation (see the Statement, *supra*, pp. 5-7). There was no confusion as to the fact that the committee intended to inquire, and did inquire, of petitioner as to the circumstances relating to the Lake County matter.

Even if, as petitioner claims, some of the questions which directly concerned the Lake County transactions also related to the Marion County indictment, petitioner was specifically ordered by the committee to answer the questions on which he was indicted and convicted. We have seen above (pp. 8-9) that the committee could properly question petitioner about the facts underlying the Marion County indictment as part of its investigation of improper activities in the labor-management field. Insofar as the questions petitioner refused to answer related to the Marion County indictment as well as the Lake County matter, the committee's

specific order to answer was definitive that the committee considered the question as part of the investigation, an investigation which the committee had authority to make.

3. Petitioner also claims (Pet. 32-33) that he was not in contempt in refusing to answer because he was acting on the advice of counsel that the questions related to the Indians indictment. It is well established that conviction under 2 U.S.C. 192 requires only proof of intentional refusal to answer, not proof of bad faith, and that therefore reliance on the advice of counsel is not a valid defense. *Sinclair v. United States*, *supra*, 279 U.S. at 299; *Braden v. United States*, No. 54, this Term, decided February 27, 1961. Here, petitioner's deliberate refusal to answer is clear from the record, whether or not he relied on the advice of counsel. While petitioner suggests that the ground for his counsel's advice was different from that in *Sinclair*, this is immaterial since the holding of that case (as well as *Braden*) is that good faith, regardless of its basis, is no defense.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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MARCH 1961.

SUPREME COURT, U. S.

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IN THE

Supreme Court of the United States

October Term, 1960

No. 301

46

MAURICE A. HUTCHESON,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITIONER'S REPLY BRIEF

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IN THE
Supreme Court of the United States
October Term, 1960

No. 701

MAURICE A. HUTCHESON,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITIONER'S REPLY BRIEF

The essentials of this case are simple.

Petitioner, then under an Indiana felony indictment charging bribery in the sale of highway rights to the state, was subpoenaed and testified before the McClellan Congressional Committee. The Committee's "rule or policy" as to witnesses then under indictment was stated by it to be that the witness would not be interrogated on the subject matter involved in the indictment, and that if the witness felt that an answer "might jeopardize his defense", "we shall not interrogate him about that" (R. 75).

Petitioner's counsel at the hearing also represented him in the Indiana case. As to the Committee's questions re-

lating to alleged efforts to obstruct the indictment of the petitioner and others in Indiana on the highway "deal" ("the highway scandal") (R. 69, 76, 51), his counsel advised petitioner and the Committee that answers thereto could jeopardize petitioner in the Indiana prosecution and ran to matters which at his trial could be held relevant against him (R. 88-9, 90, 94, 122-3, 126, 131-2).

Indeed, when Blaier, petitioner's co-defendant in the Indiana indictment and the Committee's immediately preceding witness, was asked like questions and the same counsel gave the same advice, the Committee's Chairman conceded that "it may be a borderline case" and relationship to the prosecution "could be by indirection" (R. 83, 84).

In those circumstances petitioner refused to answer and asserted, as did his counsel and as part of his reasons, that the questions related "or might be claimed to relate to or aid the prosecution in the case in which I am under indictment, and thus be in denial of *Due Process of Law*" (R. 122-3, *et seq.*).

ARGUMENT

I

The Government's brief does not challenge, much less refute, that the information solicited by the Committee related to the pending felony indictment.

The Government's contention is that such relationship was and is immaterial (pp. 8, 9):

"Whether or not petitioner is correct in his view that the information solicited by the committee was relevant on the pending state charge, he is in error in asserting that he was justified for this reason in maintaining silence. If he chose not to rely upon the privilege, petitioner would have been justified in refusing to answer the committee's questions only if the committee had no power to ask them, or if the questions were not pertinent to the investigation that the committee was authorized to conduct. . . .

"The fact that this information also related to a pending criminal indictment is not material." (Emphasis ours.)

II

The sole decision cited for the foregoing extraordinary contention is *Sinclair v. United States*, 279 U. S. 263. There is no resemblance.

(1) In *Sinclair*, there was no indictment, federal or state. The constitutional, statutory and common law rights, and the exclusive judicial and executive powers, which spring from an indictment and surround an indicted defendant, were not involved.

(2) In *Sinclair* no question of a legislative pre-trial or preview of a pending indictment was involved.

(3) In *Sinclair* the "pending suits" referred to were civil suits (p. 295).

(4) In *Sinclair* the refusal was on the ground that the authority of the Committee to investigate the matters involved had become "exhausted" and hence had ceased to be "in aid of legislation" (pp. 290, 295).

III

The underlying assumption in the Government's above-quoted contention is that, if the subject matter of the inquiry is within the Committee's authority, the petitioner, notwithstanding his pending felony indictment, had no constitutional rights of refusal except the Self-Incrimination Clause.

No authority for such a portentous consequence is cited. The contrary has been repeatedly held by this Court. (Our preceding brief, pp. 11, 21, 22.)

The right of a witness *actually under felony indictment* to remain silent when questioned as to information capable of aiding its prosecution is far older and more fundamental than the Self-Incrimination Clause, does not originate therefrom, and is not limited thereby. (Our preceding brief, p. 30.)

IV

The Government's brief seeks to buttress its contention that the Self-Incrimination Clause was the petitioner's sole right by hypothesizing (p. 10) that the Committee would not have "disallowed" a plea of the Clause "whether or not" it had validity in law before the Committee. To this there are several answers.

(1) The claim that ~~the~~ Self-Incrimination Clause was the witness' *sole* right, is not in the least established by any assumption as to Committee acceptance.

(2) The Committee had already and promptly demonstrated and publicized that it regarded resort to the Self-Incrimination Clause as showing guilt, and that such a plea "*compelled to the conclusion*" of crime and conspiracy in the highway matter not only by those who had resorted to it but also by this petitioner (Hutcheson) who had not yet even been called as a witness. (Our preceding brief, pp. 28, 29.)

A nominal acceptance of such a plea, so perverted, would have been in essence a denial,—indeed worse in its consequences than a denial, because an express denial could have been tested in the courts.

(3) The petitioner was obviously the chief target—the climax—of the Committee's build-up as to the highway matter.

The petitioner was nowhere assured by the Committee that a plea of Self-Incrimination would in his case be held valid. Furthermore no one could assure him that the Senate would so regard it.

V

The Government in its present brief does not dispute or withdraw its concession in its brief below that a plea of Self-Incrimination before the Committee would be provable at his Indiana trial to discredit the petitioner if he should exercise a defendant's supreme right to take the witness stand in his own defense. (See Government's present brief, p. 10; and our preceding brief, p. 29.)

The Government's present argument is that, because "he unequivocally disclaimed reliance upon it," therefore the consequence in Indiana of an opposite course is irrelevant.

This is begging the question. The Government's basic claim, essential to the discharge of its burden as the prosecutor, is that the petitioner had no right except to plead

Self-Incrimination and that therefore he was guilty of contempt as a matter of law.

In refuting that claim, the petitioner is entitled to show all the reasons why in law and justice he could not and should not be so confined; and why his resort to other constitutional grounds was not "capricious and arbitrary" or a "wilful, unjustified obstruction", but rather reliance on due process of law. (See decisions on page 33 of our preceding brief.)

VI

In arguing (p. 12) that petitioner's reliance on the advice of his counsel is not relevant, the Government's brief overlooks that the particular advice involved was not as to pertinency of the questions to the authorized subject matter under inquiry but rather as to the relationship of the questions to the prosecution and trial of the Indiana felony indictment.

None of the decisions cited by the Government touches such a situation. They all are cases where counsel advised that the questions were not pertinent to the authorized subject matter under inquiry, and the courts held that, if such advice was mistaken in law, it furnished no defense in law.

But here (1) the advice was as to consequences in the prosecution under the Indiana law; (2) the advice was not wrong but right; and (3) its rightness the Government's brief does not and could not challenge. (See its brief, pp. 8, 9; and our preceding brief, pp. 18, 32, 33.)

VII

The Government's brief argues (p. 11) that, notwithstanding that the Committee declared a self-restricting "rule or policy" as to matters which could be related to the Indiana prosecution, and later conceded that its questioning "may be a borderline case" and have relationship "by indirection" (R. 83, 84), nevertheless what thus confronted the witness had such "indisputable clarity" as to constitute due process of law.

The conundrums thus posed by the Committee to the witness were not as to pertinency to the authorized subject matter under inquiry, but were inherent in any application of "the rule or policy", and in the puzzle whether or not by the questionings the Committee was by "indirection" invading or bordering on invading its own announced "rule or policy".

The petitioner, a layman, was in no position to understand or resolve with indisputable clarity what was thus merely subjective and conclusory in the mind of the Committee but gravely objective and realistic as regards his own Indiana prosecution.

"Rule or policy", "indirection" and "borderline" were terms of ambiguity, generality, speculation, relativity and opinion. Their use created a confusion and uncertainty wherein the petitioner as witness could have no indisputably clear guidance as between the conclusory subjectiveness of the Committee and the contrary view by his counsel weighted with the objectiveness of the gravest consequences in Indiana.

Moreover, since the Government's own brief (p. 9) recognizes "the fact that this information also related to a pending criminal indictment", the claim of the petitioner

and his counsel that the questioning *did* invade the Committee's own "rule or policy", was thoroughly justified.

Respectfully submitted,

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1961

No. 46

MAURICE A. HUTCHESON, *Petitioner,*

v.

UNITED STATES OF AMERICA

On Writ of Certiorari to the United States Court of Appeals
for the District of Columbia Circuit

BRIEF FOR THE PETITIONER

OPINIONS BELOW

Neither the oral opinion of the district court (R. 174) nor the memorandum judgment of affirmance by the court below (R. 191-192) are reported.

JURISDICTION

The judgment of the court below (R. 191-192) was entered on December 7, 1960. A timely petition for rehearing was denied on January 9, 1961 (R. 192). The petition for certiorari was filed on February 7, 1961, and granted on April 3, 1961 (R. 193). The jurisdiction of this Court rests on 28 U. S. C. § 1254(1).

QUESTIONS PRESENTED

Petitioner stands convicted-of contempt of Congress, for refusing, on grounds of a denial of due process of law, to answer the questions set out in the present Federal indictment. The issues now presented are:

1. Whether, in requiring answers to those questions from petitioner, who was then under a State indictment for felony, the Committee of the United States Senate by its procedures and public statements would so far have pre-tried the case in which he was under State indictment, would so far have aided the prosecution in that case, and would so far have impaired his rights to a fair and impartial trial thereof, as to deprive him of due process of law.

2. Whether, by insisting on answers from petitioner in the circumstances disclosed by the present record, the Committee so far assumed powers which could lawfully be exercised only by executive and judicial branches of government as to have acted without lawful power or jurisdiction.

3. Whether, in refusing to answer the questions set out in the present Federal indictment, the petitioner was, as held below, limited in relying on his privilege against self-incrimination.¹

¹ We have rephrased and to some extent narrowed the questions set forth in the petition for certiorari (Pet. 2-3): But, in compliance with Rule 40(1)(d)(2), we have neither raised additional questions nor changed the substance of those presented in the petition.

Thus, Question 1 above is a rephrasing of Question 1(b), (c), (d) and (f) of the Petition; Question 2 above a rephrasing of Question 1(a) and (e) of the Petition; Question 3 above a rephrasing of Question 3 of the Petition.

CONSTITUTIONAL PROVISION AND STATUTE INVOLVED

1. The Fifth Amendment is in these terms:

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

2. Section 192 of Title 2, U. S. Code, provides as follows:

"§ 192. Refusal of witness to testify or produce papers

"Every person who having been summoned as a witness by the authority of either House of Congress to give testimony or to produce papers upon any matter under inquiry before either House, or any joint committee established by a joint or concurrent resolution of the two Houses of Congress, or any committee of either House of Congress, willfully makes default, or who, having appeared, refuses to answer any question pertinent to the question under inquiry, shall be deemed guilty of a misdemeanor, punishable by a fine of not more than \$1,000 nor less than \$100 and imprisonment in a common jail for not less than one month nor more than twelve months."

STATEMENT

Petitioner was charged in an eighteen count indictment (R. 4-7), returned in the United States District Court for the District of Columbia, with having refused, in violation of 2 U.S.C. § 192, just set out, to answer eighteen questions, alleged to be pertinent to the matter under inquiry,

put to him by the Senate Select Committee on Improper Activities in the Labor or Management Field. Petitioner waived trial by jury (R. 1), was found guilty by the court on all counts, and was sentenced generally to six months' imprisonment and to pay a fine of \$500 (R. 189-190). The court below affirmed without opinion (R. 191-192).

A. Background of the Committee's Investigation

The Senate Select Committee on Improper Activities in the Labor or Management Field, hereinafter referred to as the Committee, was established pursuant to a resolution, agreed to on January 30, 1957, authorizing it "to conduct an investigation and study of the extent to which criminal or other improper practices or activities are, or have been, engaged in in the field of labor-management relations or in groups or organizations of employees or employers to the detriment of the interests of the public, employers or employees, and to determine whether any changes are required in the laws of the United States in order to protect such interests against the occurrence of such practices or activities" (S. Res. 74, 85th Cong., 1st sess.; R. 176-177). The life of the Committee, subsequently extended to January 31, 1959 (S. Res. 221, 85th Cong., 2d sess.; R. 179-180), has since expired.

During the course of the investigation, the Committee received a great deal of information with respect to the use of union funds (R. 13). Included in this information was evidence that the United Brotherhood of Carpenters and Joiners of America had engaged in financial transactions with Maxwell C. Raddock, owner of the World Wide Press, a large New York printing plant, and publisher of the Trade Union Courier (R. 12-13). In an endeavor to obtain additional information with respect to these matters, the Committee on May 20, 1958, issued a subpoena to petitioner, who was and is General President of the United Brotherhood of Carpenters and Joiners of America, directing him to appear to testify on June 2, 1958 (R. 11).

B. Committee Chairman's opening statement

The date for petitioner's appearance was subsequently extended to June 27, 1958 (R. 11). Hearings, however, began on June 4, 1958, with the following opening statement by the Chairman of the Committee (R. 12-13):

"The committee will hear witnesses today on the operations of Mr. Maxwell Raddock, owner of the World Wide Press, a large New York printing plant, and publisher of the Trade Union Courier.

"Witnesses will be called to testify as to financial interests and investments in the World Wide Press by labor organizations and certain labor officials and the unorthodox manner in which bonds of the company were issued and handled.

"The committee will also inquire into the propriety of labor officials' having financial interests in Maxwell Raddock's company at the same time that they invested considerable sums of their union's funds in the plant that prints the Trade Union Courier and in subscriptions to that paper.

"The manner in which advertisements were solicited by the Trade Union Courier has been the subject of investigation by the committee staff. The committee is particularly interested in whether solicitors employed by the Trade Union Courier represented it as the organ of the AFL-CIO as well as making other false representations.

"Preliminary investigation by the staff has disclosed certain financial transactions of the United Brotherhood of Carpenters which require explanation.

"One of these transactions involves very large expenditures in the publication of a book entitled, 'The Portrait of an American Labor Leader, William L. Hutcheson.'

"Maurice Hutcheson, who is now president of the United Brotherhood of Carpenters, and Mr. Raddock will be questioned about this matter.

"The Chair may say that during the existence of this committee we have had much information and a great deal of testimony regarding the misuse of union funds, regarding personal financial gain and benefit and profit and expenditure of such funds by union officials, and we are still pursuing that aspect of labor-management relations.

"We have also had considerable evidence of collusion between management and union officials where they both profit at the expense of the men who work and pay the dues.

"In this particular instance, there is indication that the union membership have again been imposed upon by transactions that have occurred that we will look into as the evidence unfolds before us."

The hearings adjourned on June 6 and did not resume until June 25.

C. Petitioner's State Indictment

Meanwhile, nearly four months earlier—on February 18, 1958—petitioner, together with O. William Blaier and Frank M. Chapman, had been indicted in Marion County, Indiana, on two counts charging felony (Committee and Govt. Ex. 47, R. 79, 88, 91, 182-189).

The first count of this indictment (R. 182-186) was for a continuing conspiracy. It alleged that in Marion County, Indiana, and on or about May 1, 1956, the three defendants had conspired with the purpose of bribing Harry Doggett, Assistant Director, Right of Way Department of the State Highway Department of Indiana, by promise of "one-fifth ($\frac{1}{5}$) of all profits thereafter received" by them or any of them from "any and all grants or conveyances of rights of way by the defendants, or any of said defendants, to the State of Indiana across real estate owned by the defendants, or any of them, in the State of Indiana;" that "thereafter, pursuant to and in furtherance of the aforesaid conspiracy," Doggett exercised official action for the acquisition of rights of way across lands owned by the defendant Chapman in Lake County and by the defendant Blaier in Wayne County, Indiana; and that Doggett was paid as his one-fifth sums totaling \$15,800.

This alleged conspiracy was described as a continuing one. The count alleged neither a time limit nor that the conspiracy had terminated.

The second count of the indictment (R. 186-189) charged the substantive offense of paying to Doggett \$10,000 on or about December 17, 1956, as such a bribe.²

The acts charged in the indictment named the defendants as individuals and related to lands owned by them individually. The United Brotherhood of Carpenters and Joiners of America was not mentioned anywhere in either count, nor did the indictment allege, what is the fact, that the defendants named were, respectively, General President, Second General Vice President, and General Treasurer, of that union. (Chapman has died since.)

In connection with what accordingly came to be referred to by the Committee's counsel as "the highway scandal" (R. 72), the Committee opened its public inquiry on June 26, 1958, with five witnesses, including Blaier (a co-defendant in the foregoing Indiana indictment), and continued it on June 27 with this petitioner (R. 16, 88-89, 90).

D. Raddock's testimony

Petitioner and his counsel, Howard Travis, Esq., of the Indiana bar, who represented petitioner and Blaier both before the Committee and for the trial of the Indiana indictment, were continuously present during the Committee's interrogations on June 26 (R. 11, 76-77, 78, 90-91).

The Committee's first June 26 witness was Maxwell C. Raddock (R. 16), who, after answering questions relating to the publication of "The Portrait of an American Labor Leader, William L. Hutcheson" and related matters (R. 17), declined to answer, on the grounds of self-incrimination, whether he knew Metro Holovachka, the county prosecutor at Lake County, Indiana; whether certain matters

² The maximum penalty under Indiana law, for the felony in each count, was imprisonment for not less than two nor more than fourteen years, plus a fine. Burns' Indiana Criminal Code, §§ 10-601, 10-1101.

dealing with the purchase and sale of land in Indiana were being presented to a grand jury in Lake County; whether he knew Michael Sawochka as secretary-treasurer of Local 142 of the Teamsters in Gary, Indiana; and whether Mr. James Hoffa's help or assistance had been requested in connection with possible indictments dealing with the purchase and sale of land in Indiana (R. 18-21).

E. Committee Counsel's "background" statement

Thereupon the following explanation was made to the witness Raddock, and to all present including petitioner, by the Counsel and Chairman of the Committee (R. 21-24):

"Mr. Kennedy. Mr. Chairman, could I read a short statement in background of this situation to clarify it?

"The Chairman. So that there will be no doubt as to the subject matter being inquired into, and so that the witness may be so apprised, you may read some background information, not as testimony, but upon which to predicate further testimony.

"Mr. Kennedy. In May and June of 1957, hearings were held before the Gore committee, concerning the purchase of land along a proposed right-of-way in Lake County, Ind., by certain individuals, including Frank Chapman, who was the general treasurer of the Carpenters International.

"The Chairman. Is that right-of-way for a highway for a public highway?

"Mr. Kennedy. That is correct. And the purchase that was being looked into was the purchase that was made in June of 1956.

"Involved in this situation, along with Chapman, were Maurice A. Hutcheson, general president of the Carpenters, and O. William Blaier, second general vice president. Within several months after the purchase of the land it was sold to the State for the highway at a \$78,000 profit on a \$20,000 investment.

"Part of the proceeds of the profits were allegedly paid by Chapman to the Indiana Highway Commission, and a deputy in the right-of-way office of the Indiana Highway Department.

"Hutcheson, Blaier, and Chapman invoked the fifth amendment before the Gore committee on this matter. This whole situation was presented to the Lake County grand jury by Metro Holovachka, the county prosecutor, commencing July 22, 1957.

"The grand jury recessed on July 23, and thereafter considered the matter for an additional day on August 19, 1957.

. . . .

"Hutcheson, Blaier and Chapman did not appear before the grand jury because Holovachka did not subpoena them, or could not. On August 20, 1957, Holovachka announced that no indictments of the Carpenters' officials as well as others involved would be forthcoming because 'A lack of jurisdiction.' Moreover, through an attorney whom Holovachka refused to identify, the Carpenters' officials made restitution to the State of the \$78,000 profit made on the deal.

"Subsequently, Mr. Chairman, these three individuals as well as certain of the State officials, were indicted in an adjoining county, Marion County, in the State of Indiana on this deal.

"We are inquiring into the situation in connection with the presentation before the grand jury in Lake County, Ind.; the intervention by certain union officials into that matter, and the part that was played by Mr. Hutcheson himself, Mr. Sawochka, the secretary-treasurer of local 142 of the Teamsters, and Mr. James Hoffa, the international president of the Teamsters.

"The Chairman. Is there some information that either union funds were used in the course of these transactions or that the influence of official positions of high union officials was used in connection with this illegal operation?

"Mr. Kennedy. We have information along both lines, Mr. Chairman, not only the influence but also in connection with the expenditure of union funds.

. . . .

"The Chairman. That is the interest of this committee in a transaction of this kind or alleged transaction of this kind, to ascertain again whether the funds or dues money of union members is being misappropriated, improperly spent, or whether officials in unions are using their positions to intimidate, coerce, or in any

way illegally promote transactions where the public interest is involved.

"Mr. Raddock, you have heard a background statement. That is not evidence, but it is information, however, which the committee has, regarding this matter out there. The committee is undertaking to inquire into this in pursuit of the mandate given to it by the resolution creating the committee."

Following this explanation, Raddock refused, on the grounds of self-incrimination, to answer a series of questions concerning the allegedly improper efforts to prevent the bringing of the indictment in Lake County, Indiana (R. 24-38). These questions included whether Raddock on August 11, 1957, registered at the Drake Hotel in Chicago along with petitioner (R. 27-28, 33); whether Raddock's expenses for the trip and services rendered were paid by the Carpenters' union (R. 29-31); whether Raddock contacted James Hoffa of the Teamsters while Raddock was in Chicago (R. 33); whether Hoffa agreed to contact one Sawochka, the local Teamster official in Gary, Indiana (R. 33); whether Raddock then went to Gary, Indiana, and consulted with Sawochka and Joseph P. Sullivan, attorney for Teamster Local 142, about having no indictments against petitioner, Chapman and Blaier (R. 35-36); whether Raddock discussed the matter with Charles Johnson, vice president of the Carpenters (R. 37); whether Raddock played a part in the restitution of the \$78,000 to the State of Indiana (R. 38); and whether Raddock was employed to fix the case in Gary, Indiana (R. 38).

F. Committee Chairman's comments on Raddock's claim of privilege

In the course of the witness Raddock's questioning, the Chairman of the Committee made the following comments regarding that witness's invocation of his privilege against self-incrimination (R. 19-20, 23-24, 24-25, 31-32, 38-39):

"The Chairman. Mr. Raddock, you have answered very freely all questions up to now, and answered some

of them at considerable length. I don't know what is to be implied from this immediate change of attitude. It is your privilege to take the Fifth Amendment if you honestly believe that answering the questions truthfully might tend to incriminate you.

.

"Mr. Raddock, you have heard a background statement. That is not evidence, but it is information, however, which the committee has, regarding this matter out there. The committee is undertaking to inquire into this in pursuit of the mandate given to it by the resolution creating the committee.

"It is our duty to inquire into it. If you have information, and apparently you have because you say if you give it, it might tend to incriminate you, may I say to you that you have an opportunity here now, if you have information that will throw any light on this, you have an opportunity now to render a service to your country, to union members, to honest, decent unionism as such, and also to law and order in this country, if you will cooperate and give the information and the facts you have which are within your knowledge.

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"The Chairman. Well, I believe you said you loved your country above everything else. I was hoping that your cooperation would clearly confirm that statement. You have the right, of course, if you honestly believe that if you told the truth the truth might tend to incriminate you, you have the right under the laws of this country, under its constitution to withhold the facts that you have.

"I was hoping it wasn't that serious. I am really disappointed that it is. I was hopeful that you could cooperate with us and help us get leads here and evidence that would help to expose those who may have engaged in criminal acts, those who may have abused their position and their authority and as union officials, and who may have brought discredit upon one of the large international unions of this country, and that you might be helpful in securing the measure of law enforcement that helps to preserve this country that you profess to love.

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"The Chairman. Mr. Raddock, you have answered other questions regarding the work you did for the same international union, and stated that you got paid for it, and got your expenses for it.

"I assume, then, of course, where you answered with respect to that, there was nothing connected with your employment that might tend to incriminate you, or cause you to be a witness against yourself by answering truthfully about it.

"Now we reach this point where you are apparently on a mission for this international union, and your expenses are being paid. Now you state, if I understand you correctly, that if you answered truthfully regarding this trip, this mission, the services rendered, and accepting expenses for it, that if you answered truthfully, the truth might tend to incriminate you; is that correct?

"(The witness conferred with his counsel.)

"Mr. Raddock. Yes, sir, Senator.

"The Chairman. Well, that is a very sad situation. Here is a great international union. The officers have tremendous responsibility. They are in a position of great and sacred trust, I would say, to literally thousands upon thousands of working people in this country who are members of that union, who support it. Here we have now expenditures being made over the authority or authorization of the president of that great international union, expenses being paid for services, I assume, rendered, where the one who performs the service and who receives the expenses states that if he told the truth about it, that is, as to the kind of service he was to perform, or what he was employed to do, or having accepted and received the expenses incurred in connection with that service, if he told the truth about it, it might tend to incriminate him.

"That cannot help—without being explained, it cannot help but be a reflection upon the management of that union.

"It is those things that has given the country as well as this committee and the Congress grave concern about how some affairs of unions are today being conducted.

"I should hope that you would reconsider and be able to help the committee and give us the truth about it.

"If Mr. Hutcheson, and the services you were engaged in, that you were employed to perform, and the expense that he authorized here and paid out of union funds were for legitimate reasons, I would be hopeful that you would give us an explanation of it.

"Can you do that?

"(The witness conferred with his counsel.)

"Mr. Raddock. Senator, on the advice of counsel, I must respectfully decline to answer on the ground that to do so might tend to make me a witness against myself.

"The Chairman. I am compelled, and I think everyone who listens or who may read this transcript is compelled, to the conclusion that you are being truthful at least about taking the fifth amendment, and that if you did tell the truth, it might tend to incriminate you, and also those of the union who are responsible for and who authorize the services you performed.

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"The Chairman. You will be recalled again. I just wanted to know whether you wanted to make any statement now in connection with these matters about which you invoked the fifth amendment.

"You will be given another opportunity to testify, but I just wondered now, after the questions have been asked you which carry with them very definite implications that would implicate you in an enterprise or in a project that would be improper insofar as the use of union funds in the judgment of the Chair, at least, I wondered if you wanted to clarify or make any statement in your own interest or to help the efforts of the committee with respect to the matter about which you have been interrogated here this morning."

G. Testimony of other June 26 witnesses

After Raddock left the stand, the Committee on the same day—June 26—called Sawochka, Johnson, Sullivan, and Blaier, all of whom were presented and interrogated as playing parts in the highway "deal" already set forth in

the "background statement," particularly "in the restitution of the \$78,000 to the State of Indiana" (R. 38, 51). Sawochka (R. 45-52) and Johnson (R. 54-56) invoked their privilege against self-incrimination, while Sullivan, who admitted that he was the attorney who presented the restitution check to the State of Indiana (R. 70), refused on grounds of the attorney-client privilege to identify the person who drew the check (R. 70-71), and invoked the same privilege in respect of numerous other questions (R. 56-76). Sullivan did not know the present petitioner (R. 71).

Blaier, the final June 26 witness, was accompanied by Howard Travis, Esq., who, as has been indicated, *supra*, page 7, was also defense counsel for him and the petitioner in the matter of the Indiana indictment (R. 76-77).

Mr. Travis urged that interrogation of Blaier, the Second General Vice-President of the United Brotherhood of Carpenters and Joiners of America (R. 76, 81), as to the subject matter of the "background statement" would involve his Indiana indictment and be an intervention by the Committee in its prosecution. The Chairman of the Committee thereupon announced the following standards to govern the interrogation (R. 77-78):

"The Chairman. All I can say is that we will go into anything within the jurisdiction of this committee, about which we think the witness may have information, and can give testimony regarding except where, even though the committee may be interested in it, the matter may be covered by our jurisdiction, and would be clearly within the purview of these hearings, if the witness is under indictment for the offense for which he was indicted, we shall not interrogate him about that.

"If he feels that might jeopardize his defense, we recognize that, where he is under indictment he should not be compelled to be a witness against himself on the subject matter involved in the indictment. That rule or policy will be observed.

"Proceed with the interrogation and we can rule upon anything that comes up."

When, notwithstanding this assurance by the Committee of the "rule or policy" to be observed by it, it continued to press Blaier as to the presupposed conspiracy to prevent indictment of himself and the petitioner in the highway matter, and the indictment itself had been marked as Committee Exhibit 47 (R. 79, 87-88, 182-189), Mr. Travis consistently protested. For example (R. 78):

"The charge is a conspiracy charge, and the indictment charge is a conspiracy charge, and it is very clear under Indiana criminal law that events which happen after the specific event charged in the indictment might be used by the prosecution to show the origin and continuance of the indictment, to relate it back.

"The matters that have been inquired about today in the hearing relate, to my mind, directly to the matters, to the transaction, for which he is indicted."

Again (R. 82):

"Mr. Travis. If the inquiry will relate to transactions in Lake County, Ind., the witness will be advised by me that he cannot answer the questions, because he is charged with conspiracy under indictment, and anything with regard to that, restitution or otherwise, is directly related, and could be used by the prosecution, possibly, against him."

And again (R. 85):

"Mr. Travis. No, sir. The indictment is in two counts. One is a conspiracy to commit a felony, to wit, bribery of a State official. I wish to say at this time that it is my responsibility as attorney for this gentleman in the case under which he is under indictment, to advise him whether or not I think the questions which Mr. Kennedy is asking and is going to ask with regard to Lake County could be used in that prosecution, and my responsibility will be carried out by advising the witness to answer no questions."

In overruling these protests the Chairman of the Committee nevertheless said (R. 86):

"The Chairman. It may be a borderline case. I am unable to determine it at this time.

.

"The Chairman. The Chair finds that the indictment is for alleged actions in 1956 that the crimes charged under the indictment took place.

"This is something like a year later. If you want to exercise your privilege, that is all right. But I do not know how this could be related to an offense that was committed a year earlier. It could be by indirection, but certainly not directly, if the indictment is anywhere near accurate.

"Mr. Travis. Indirection, Mr. Chairman, can be just as harmful as a direct matter."

Blaier accordingly, on the advice of his counsel, refused to answer "because it might aid the prosecution in the case in which I am under indictment" (R. 82, 83, 84, 86).

H. Petitioner's interrogation

Petitioner's public interrogation on the highway "deal" followed on the next day, June 27 (R. 90).

Petitioner was accompanied by his counsel, Howard Travis, Esq. (R. 90), who at the outset (R. 91-92) advised the Committee that petitioner would not claim the Fifth Amendment's privilege against self-incrimination but would claim the rights of a man under indictment, "including the due-process-of-law clause, that he must be tried only before the court where the indictment is pending." Mr. Travis further said (R. 92):

"I submit, therefore, that any inquiry by this committee into or about any of the facts related to or which might be related to such indictment and the transactions recited therein, however remote the same may be, and whether occurring before or after the transaction recited in the indictment, or as to any matter which might be attempted to be used in furtherance

of the prosecution thereof, would be improper, without appropriate pertinency and outside the scope of the investigation which this committee is authorized to make."

Objections similar in tenor were voiced by Mr. Travis throughout petitioner's questioning (R. 128, 132-134), which reflected by dates, names, places and data the "background information" stated by the Committee the day before as "the subject matter being inquired into" (R. 21).

Thus, petitioner was asked to state how long he had known the witness Raddock (R. 96). Mr. Travis intervened, asking if the questioning was going to be about "the book rather than the Lake County transactions" (R. 96). In reply, counsel for the Committee stated (R. 96):

"Mr. Raddock is not under indictment in any conspiracy with Mr. Hutcheson. I am just going to ask Mr. Hutcheson about his relationship with Mr. Raddock."

The Chairman added (R. 96-97):

"* * * I have gone into the matter a little to ascertain where the line of questioning may go. He will be interrogated regarding the book. He will also be interrogated regarding the use of union funds in a project which, on the face of it at least, appears to have the objective which was to obstruct justice.

"So he will be interrogated about those things. As to any act covered in the indictment for the period of which the crime is alleged in the indictment, he will not be interrogated. But the matters that he will be interrogated about are subsequent to the time that the offense in the indictment was charged."

Petitioner was then questioned about the book (R. 97-119). He admitted that a total of \$310,000 was paid from the general fund of the Carpenters' Union for production of the book (R. 113), but stated that "this whole transaction has been handled by our general executive board,

and 'because of my relationship' I have been reluctant to get into it" (R. 107).

I. Petitioner's refusal to answer and his reasons for such refusal

Petitioner was next asked a series of questions with respect to \$83,000 paid to Raddock in connection with the Carpenters' 75th anniversary dinner (R. 119-120), all of which he answered. On further questioning, he denied that Raddock had ever performed any illegal act on behalf of the union (R. 123). He was then asked the question which forms the basis for Count One in the indictment, namely, whether Raddock had received from the union payment for acts performed on behalf of appellant as an individual (R. 123). After conferring with his counsel, petitioner stated (R. 123):

"On the advice of counsel, I refuse to answer the question on the ground that it relates solely to a personal matter, not pertinent to any activity which this committee is authorized to investigate, and also it relates or might be claimed to relate to or aid the prosecution in the case in which I am under indictment, and thus be in denial of due process of law."

On direction to answer, he was given the following explanation by Senator Ervin and the Chairman of the Committee (R. 124):

"Senator Ervin. Mr. Chairman, I just wanted to suggest that in my judgment there is no validity in the first point of his objection. The question does not relate to a purely personal matter. It relates to the use of union funds, and certainly this committee has authority to investigate the use of union funds.

"The Chairman. For that reason, the Chair ordered the witness to answer the question, because we certainly have jurisdiction to interrogate about the expenditure of union funds, and the question was predicated upon the payment out of union funds, which might be an improper expenditure of union funds to perform a per-

² I.e., that petitioner is the son of William L. Hutcheson (R. 94), the subject of the book.

sonal service for the witness. I think that the question is legitimate. Its objective is obvious, to ascertain the conduct of this witness with respect to his position in a fiduciary capacity as trustee of union money. The question stands."

For the reasons previously given petitioner refused to answer the question, and thereafter refused to answer the questions forming the basis for Counts Two through Six of the indictment (R. 126-137). These questions were:

"Have you, unrelated to this offense charged in the indictment now against you, engaged the services of Mr. Raddock, and have you paid him out of union funds for the performance of those services, to aid and assist you in avoiding or preventing an indictment from being found against you or for being criminally prosecuted for any other offense other than that mentioned in this indictment? (Count Two; R. 5, 126).

"Did you engage the services of Mr. Raddock and pay him for those services out of union funds, to contact, either directly or indirectly, the county prosecuting attorney, Mr. Holovachka, given name Metro, in Lake County, Gary, Ind.? (Count Three; R. 5, 126).

"Have you paid Max C. Raddock out of union funds for personal services rendered to you at any time within the past 5 years? (Count Four; R. 5, 129).

"Have you used union funds to pay Max C. Raddock for any services rendered to you personally, wholly disassociated from any matters out of which the pending criminal charge arose? (Count Five; R. 5, 129).

"Was he [Mr. Raddock] there [in Chicago] on union business for which the union had the responsibility for payment? (Count Six; R. 5, 136)."

At one point while the questions set out above were being put, Mr. Travis said (R. 128):

"Mr. Chairman, I would like to direct the committee's attention at this time to the fact that the refusal goes over and above the jurisdictional question of the committee, and it goes into a matter which—when the statement that the Chair just made refers to the expenditure of union funds for personal matters—have

also involved Maxwell Raddock, and in the prior testimony the committee has shown that that relates to this Lake County transaction, for which Mr. Hutcheson is under indictment."

Following petitioner's refusal to answer the last question quoted, the Committee heard testimony from Paul J. Tierney, an assistant counsel of the Committee, who testified that, on the basis of an air travel card issued to Raddock by the Carpenters' Union, the Union paid Raddock for a round trip ticket to Chicago from New York on August 11, 1957 (R. 139-140). A hotel bill submitted at this time also disclosed that the Carpenters' Union paid Raddock's hotel expenses at the Drake Hotel in Chicago from August 11 through August 17, a total of \$147.10 (R. 140).

Petitioner then resumed the stand, and, again for the reasons previously stated, refused to answer the questions forming the remaining counts in the indictment, to wit:

"Was Mr. Raddock paid on that trip, the expenses of his paid by union funds while he was on union business? (Count Seven; R. 5, 140).

"You were out in Chicago at the same time? (Count Eight; R. 6, 146).

"Were your expenses on that Chicago trip paid by the union? (Count Nine; R. 6, 146).

"Were you out in Chicago at that time on union business? (Count Ten; R. 6, 147).

"Do you know Mr. James Hoffa? (Count Eleven; R. 6, 148).

"Did you make an arrangement with Mr. Hoffa that he was to perform tasks for you in return for your support on the question of his being ousted from the A.F.L.-CIO? (Count Twelve; R. 6, 148).

"Isn't it a fact that you telephoned Mr. Hoffa from your hotel in Chicago on August 12, 1957? (Count Thirteen; R. 6, 148).

"And wasn't that telephone call in fact paid out of union funds, the telephone call that you made to him on August 12? (Count Fourteen; R. 6, 149).

"Do you also know Mr. Sawochka of the Brotherhood of Teamsters? (Count Fifteen; R. 6, 149).

"Isn't it a fact that you had Mr. Plymate who is a representative of the brotherhood, telephone, and your secretary telephone, Mr. Sawochka from your room on August 13, 1957? (Count Sixteen; R. 6, 149).

"And isn't it a fact that that telephone bill and that telephone call was paid out of union funds? (Count Seventeen; R. 7, 150).

"Did you have any business with local 142 of the Teamsters in Gary, Ind.? (Count Eighteen; R. 7, 151)."

During the course of the questioning, petitioner re-affirmed that he was not invoking the Fifth Amendment privilege against self-incrimination (R. 125, 127, 130, 135, 146). At one point this colloquy took place (R. 130-131):

"Senator Ervin. What I am asking you is this. You say you are not invoking the privilege of self-incrimination; is that right?

"Mr. Hutcheson. That's right.

"Senator Ervin. And you do not contend that due process of law, in and of itself, includes a privilege against self-incrimination?

(Witness conferred with counsel.)

"Mr. Hutcheson. Sir, that is a legal question. I am not qualified to answer."

At another point petitioner said (R. 132),

"Sir, I have been advised that certain matters related to this subject might be claimed to relate to or aid the prosecution of the case in which I am under indictment and, thus, be in denial of due process of law."

Toward the close of the interrogation, petitioner admitted, in response to an inquiry by a member of the Committee, that he was concerned that there should be no actual or apparent violation on his part of the AFL-CIO code of ethics concerning union officials who invoke the Fifth Amendment when asked about their official conduct (R. 147).

Petitioner admitted understanding that he was interrogated about union funds (R. 127), and on several occasions during the questioning, he was told by members of the Committee that their inquiries were directed to union matters, and did not relate to anything involved in the pending indictment (R. 125, 128, 132). This evoked the following comments from his counsel, Mr. Travis (R. 133-134):

"I hope you realize, Senator, it is a very delicate question for me and a very heavy responsibility. But, knowing what I do about the matter under which he is indicted, I have to exercise my judgment as best I can. There are certain areas that I have determined I cannot safely allow Mr. Hutcheson to testify, and which I think would violate his fundamental rights if he was forced to.

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"Of course, I think any man under indictment guaranties of due process of law should not be questioned in any form concerning any matter that might remotely in any way aid the prosecution in that case.

"Naturally, this committee can't sit as prosecutors or judges or jurors in that matter under which Mr. Hutcheson is indicted.

"I think there are fundamental guarantees to any person under indictment that that matter shall be tried solely in the forum where the indictment lies."

J. Committee Chairman's closing public statement

Following the close of its interrogation of the petitioner, the Committee Chairman made a public statement, the pertinent portions of which are as follows (R. 152, 153-154):

"The Chairman. The chairman will issue the following statement:

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"The testimony further indicates that certain high officials of both the Teamsters and the Carpenters Unions, two of the largest unions in the country, with the help and assistance of Mr. Raddock were involved in a conspiracy to subvert justice in the State of Indiana.

"All the facts regarding this conspiracy undoubtedly have not been developed by the committee.

"Further exposure we believe can and should be made. We will be glad to assist and help law enforcement officials in the State of Indiana if they determine that they would interest themselves in the matter."

K. Petitioner's Federal indictment and trial

Petitioner's failure to answer was reported by the Committee to the Senate (S. Rep. 2265, 85th Cong., 2d sess.), and certified by the President of the Senate to the United States Attorney (S. Res. 362, 85th Cong., 2d sess.; R. 181). The present indictment (R. 4-7) followed.

The trial consisted of readings by the prosecution witness, Paul J. Tierney, Assistant Counsel to the Committee, from the transcript of proceedings before the Committee, supplemented by some oral testimony and portions of the Committee's Second Interim Report, plus testimony by the Committee Chairman; the latter testified as follows (R. 165):

"Q. As Chairman of this Committee, did you have any intention when you said, what I have read several times and I am sure both sides know what it is and it is in the record, did you have any intention of encouraging or assisting the State of Indiana in conducting a further investigation of this matter looking towards a state prosecution?

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"The Witness. This was the conclusion of the hearings in this particular investigation. At the conclusion, I made this brief statement that is in the record.

"Our legislative function had been performed in seeking information regarding crimes and improper activities. Some evidence had been presented indicating the possibility of a further crime involving this defendant possibly and officers of another large union. It has been our practice to cooperate with state and federal officials where any evidence is developed before us with respect to a crime having been committed.

Our legislative purpose is to search out and find if crime has been committed.

"My statement here is to the effect that if the state officials desired to pursue any testimony that we had developed, we would cooperate with them and make the record available to them."

Meanwhile the Government had offered in evidence as Govt. Ex. 6 (R. 159-160) the Committee's Second Interim Report (Sen. Rep. No. 621, Part 2, 86th Cong., 1st sess., dated October 23, 1959). After extensive colloquies and a motion to strike numerous portions of that report (R. 160-162, 166-173), the offer was restricted so that only certain portions were admitted in evidence (R. 170-173).⁴ The following excerpts from the pages in evidence are pertinent here:

"MAXWELL C. RADDOCK AND THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA" (P. 517.)

• • • • •

"Among the specific points pursued by the committee were:" (P. 517.)

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"3. Certain events preceding the indictment of General President Maurice Hutcheson, Second Vice President O. William Blaier, and Treasurer Frank Chapinan for conspiracy to bribe an Indiana State highway official in connection with their purchase and resale of a piece of land along which a superhighway was to be built. Of particular interest to the committee in this affair was the purchase for \$40,000 by the Teamsters Union, the Carpenters' warm friend, of a piece of land assessed at about \$3,800. One of the beneficiaries of

⁴ Namely: Pages 517-518, beginning "Maxwell C. Raddock and the United Brotherhood of Carpenters and Joiners of America"; page 518, topic 3; page 518, last paragraph through first 3 lines on page 519; page 554, beginning "The second Raddock activity in 1957" to and including the first paragraph on page 561; page 590, beginning with "Findings", to and including the first 3 full paragraphs on page 592.

a parallel transaction by the sellers of this property was the prosecuting attorney of Lake County, Ind., Metro Holovachka, who the same month had announced that no indictment of the three Carpenter officials would be forthcoming because of a 'lack of jurisdiction' (the indictment was subsequently returned in adjoining Marion County)." (P. 518.)

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"The second Raddock activity in 1957 which did not appear to come within the purview of his editing and publishing efforts was one about which, when questioned by the committee, he grew markedly taciturn by contrast with his earlier volubility, resorting, indeed, to the fifth amendment in response to the queries leveled at him on the subject.

"Of concern to the committee in this sphere was the role Raddock played in certain events preceding the indictment in Marion County, Ind., of three top Carpenter officials—President Hutcheson, Second Vice President Blaier, and Treasurer Chapman.

"As detailed by Committee Counsel Kennedy, the developments leading up to the indictment were as follows: In June 1956 Hutcheson, Blaier, and Chapman bought for \$20,000 a piece of land in Lake County, Ind., along the proposed right-of-way of the new Tri-State Expressway, selling it several months later to the State of Indiana at a \$78,000 profit, part of which allegedly was paid by Chapman to a deputy in the State highway department's right-of-way office.

"Following hearings into this transaction by the Gore subcommittee May 1957, the entire matter was presented to the Lake County grand jury, on July 22, 1957, by County Prosecutor Metro Holovachka. The prosecutor either did not or could not subpoena the three Carpenter officials to appear before this grand jury, and on August 20, 1957, announced that no indictments would be forthcoming because of a 'lack of jurisdiction,' and that the Carpenter officials would make restitution to the State of the \$78,000. This was done through an attorney Holovachka refused to name. Subsequently, however, the three officials were indicted in adjoining Marion County for conspiring to bribe the highway department employee.

"The committee's interest in this entire situation was primarily focused on Holovachka's presentation of the case to the Lake County grand jury, and on the question of whether union funds and the influence of union officials, chiefly Teamsters President James Hoffa and Michael Sawochka, secretary-treasurer of Teamster Local 142 in Gary, Ind., were used to prevent the indictment of the Carpenter trio in Lake County." (P. 554.)

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"FINDINGS—MAXWELL C. RADDOCK AND THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA" (P. 590.)

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"From the evidence, the committee also finds that Maxwell C. Raddock was used by Hutcheson as a fixer in an attempt to head-off the indictment of Hutcheson, the Carpenter's vice president, O. William Blaier, and the treasurer, Frank Chapman.

"A series of telephone calls between Raddock and Michael Sawochka, a powerful Teamsters Union official in Lake County, Ind., immediately after Hutcheson had been in touch with James R. Hoffa, was followed in turn by contacts between Sawochka and the former Lake County prosecutor, Metro M. Holovachka. The fact that these telephonic contacts preceded Holovachka's announcement that no indictments would be brought against the Carpenters Union officials in Lake County must, in the light of the evidence, be considered more than mere coincidence. It is significant to the committee that the voluble Mr. Raddock lapsed into the fifth amendment when confronted with questions on this subject, as did Teamster official Sawochka.

"Holovachka's subsequent profiting from a parallel transaction, in which the Teamsters Union headed by Sawochka was also involved, lends further credence to the charge of Raddock's use as a fixer." (P. 592.)

L. The rulings below

At the close of the trial Judge Morris rendered the following oral decision (R. 174):

"The Court. And I say it [the Committee] did have the right to ask the questions and the man is in contempt of court in not answering them. That is my answer. Any other answer in this jurisdiction has got to come from the Court of Appeals.

"The Sacher case, Mr. Hitz doesn't seem to think it is in point with the facts in this case. I disagree with him. I think it is absolutely dispositive of what is involved in this case and I think it makes it abundantly clear that the relief that this defendant ought to have gotten before the Committee of Congress was his claim under the immunity clause of the Fifth Amendment. He did not seek it and it is the only way he could properly seek it, before a Committee of Congress.

"That is my ruling and that is what I hold.

"You can prepare a decree accordingly.

"I find the defendant guilty of all counts of the indictment * * *."

Petitioner was sentenced to six months' imprisonment and to pay a fine of \$500 (R. 189-190). The Court of Appeals affirmed by memorandum order (R. 191-192) and denied a timely petition for rehearing (R. 192), after which this Court granted certiorari (R. 193).

SUMMARY OF ARGUMENT

I. A. The matters about which the Committee interrogated petitioner, whose refusal to answer forms the basis of the present Federal prosecution, relate to events taking place in August 1957, after the date of the acts alleged in the Indiana indictment, but before that indictment was returned, and all related to allegedly improper efforts on petitioner's part to prevent an indictment being found against him. Consequently, under Indiana law, which makes admissible any statement or conduct of a person indicating a consciousness of guilt, all the matters about which peti-

tioner was interrogated would have been admissible against him at the trial of his Indiana indictment. Petitioner and his counsel were therefore right in telling the Committee that answers to the questions in issue would have injured petitioner, and the Committee and its counsel, who contended that the questions had no bearing on the pending State indictment, were demonstrably in error.

Moreover, if petitioner had invoked a privilege against self-incrimination in respect of the questions now in issue, that claim of privilege could have been used against him at the Indiana trial had he there testified, as indeed the Government has admitted, and thus such a claim would have circumscribed his freedom of action at that trial.

Actually, by analogy to the link-in-the-chain cases (e.g. *Hoffman v. United States*, 341 U. S. 479; *Overman v. State*, 194 Ind. 483, 143 N. E. 604), it is sufficient to show that the answers *might* be dangerous because injurious disclosure *could* result. And, in view of the circumstance that the scope of 18 U. S. C. § 3486 has been materially changed since it was considered in *Adams v. Maryland*, 347 U. S. 179, the Committee would not have been able to grant petitioner immunity had he been willing to answer.

B. We submit that it is a violation of due process of law for a legislative committee to pretry a pending criminal case—which is precisely what the Committee did here. So far as we are aware, the present case represents the first instance in which a Congressional committee has actually interrogated a witness under indictment in respect of matters bearing on that indictment, and then cited him for contempt of Congress because he refused thus to assist the prosecution at his impending trial under that indictment. Petitioner's appearance before this Committee was, in substance and effect, a legislative trial, at which the Committee framed the charges, prosecuted petitioner by cross-examining him, fashioned its own procedures, laid down its own rules of law, proclaimed guilt, exhorted law enforcement

officers to "further exposure", publicly rendered a verdict against petitioner as he was leaving the stand, and finally entered a solemn judgment of guilt upon him in its Second Interim Report. Whether or not this was a bill of attainder or a procedure partaking of its nature, it was assuredly a denial of due process. *Kilbourn v. Thompson*, 103 U. S. 168, 182.

Here the Committee itself—not newspapers, intent on circulation, but a Committee of the Senate—poisoned the outcome of petitioner's pending trial. Cf. *Delaney v. United States*, 199 F. 2d 107 (C. A. 1); *Beck v. Washington*, pending on writ of certiorari, No. 40, this Term. Nor is *Sinclair v. United States*, 279 U. S. 263, authority for the Committee's action, since there there was no pending criminal indictment, but only a pending civil action.

C. (1) Petitioner was virtually certain to incriminate himself no matter what he did: if he answered, he might well have helped the pending prosecution; if he answered falsely, he would have committed perjury; and since he did not answer at all he has been convicted of contempt of Congress. Such a procedure is so fundamentally unfair as to involve a deprivation of due process of law, as has indeed been held where the risk of self-incrimination involved a Federal crime. *Aiuppa v. United States*, 201 F. 2d 287, 300 (C. A. 6).

(2) A Federal agency cannot, consistently with fundamental fairness, force a citizen into jeopardy of a State jail.

United States v. Murdock, 284 U. S. 141, which indeed held the contrary (although in a situation where the witness had not yet been prosecuted by the State), rested on a double misreading of English law. First, where the danger of self-incrimination under foreign law is real, not speculative, and duly proved, English law allows the witness to invoke it. *United States v. McRae*, L. R. 4 Eq. 327, affirmed in part, L. R. 3 Ch. App. 79. Second, a State of the Union is not a foreign country so far as the United States is con-

cerned; cf. *Testa v. Katt*, 330 U. S. 386. And, third, an increasing number of States, by decision or statute, are permitting State witnesses to invoke the danger of self-incrimination under Federal law.

Hale v. Henkel, 201 U. S. 43, which is also to the contrary in a pre-State-indictment situation, rested on the same misreading of English law, and moreover misinterpreted *United States v. Saline Bank*, 1 Pet. 100, where Chief Justice Marshall squarely held that, in a suit by the United States in a Federal court to recover a money judgment, the defendants would not be required to make any discovery that would expose them to penalties under State law. The statement in *Hale v. Henkel*, 201 U. S. at 70, that in the *Saline Bank* case "the prosecution was under a state law which imposed the penalty, and that the Federal court was simply administering the state law", is flatly contradicted by the actual manuscript record of the *Saline Bank* case: there was no prosecution, and the complaint did not mention the State statute, but simply sought a money judgment on the footing that the defendants had conspired to defraud the United States.

(3) We urge a reaffirmation of the pristine and sturdy Federalism of the Great Chief Justice, and a holding that a procedure under which a witness is virtually bound to go to jail whatever he does violates fundamental principles of fairness. While this Court has never hesitated to reconsider its constitutional pronouncements, see Brandeis, J., in *Burnet v. Coronado Oil & Gas Co.*, 285 U. S. 393, 405, 406-413, what is sought here is not a new departure but rather a return to first principles; and certainly *Twining v. New Jersey*, 211 U. S. 78, did not irrevocably fix for all time the scope of due process of law in the area of self-incrimination, any more than either *Weeks v. United States*, 232 U. S. 383, or *Wolf v. Colorado*, 338 U. S. 25, represented the last word on the scope of due process of law in respect of unlawful searches and seizures. Cf. *Mapp v. Ohio*, 367 U. S. 643.

(4) Upholding petitioner's contention will not in any sense hamper legitimate legislative inquiries. If Congress reenacts 18 U. S. C. § 3486 as it stood when *Adams v. Maryland*, 347 U. S. 179, was decided, the witness will have complete immunity in all courts, and its committees will again be free to require answers without reference to possible State prosecutions. Cf. *Reina v. United States*, 364 U. S. 507.

(5) In any event, the demonstrable fact that the Committee here sought to assist and encourage—indeed, to instigate—State prosecutions, plainly rendered improper the questions it asked. Here the analogy is the former series of cases on illegal searches that involved collaboration between State and Federal law enforcement officers (*Byars v. United States*, 273 U. S. 28; *Gambino v. United States*, 275 U. S. 310; *Lustig v. United States*, 338 U. S. 74), an analogy which has already been recognized in the present field. See *Feldman v. United States*, 322 U. S. 487, 494; *Knapp v. Schweitzer*, 357 U. S. 371, 380. Since on this record the Federal Committee acted as an instrument of State prosecution or investigation, its questions were improper on any view.

If petitioner is right on his due process point, then, obviously, proof that the questions asked were pertinent is immaterial. *Barenblatt v. United States*, 360 U. S. 109, 112.

II. A. The present record shows that the Committee frankly and openly declared that its purpose was "further exposure" and "to search out and find if crime has been committed". Unlike the situations presented by *Wilkinson v. United States*, 365 U. S. 399, and *Watkins v. United States*, 354 U. S. 178, 200, in this case the resolutions authorizing the present Committee to proceed directed it in terms "to conduct an investigation and study of the extent to which criminal . . . practices or activities are, or have been, engaged in". Thus here the Committee

was specifically directed to undertake the functions of a grand jury.

B. The Committee's Second Interim Report, which is a part of the present record, demonstrates that petitioner's answers were not needed for fact-finding purposes. Actually, the Committee counsel's background statement shows that the Committee had already completed its fact-finding before petitioner was ever called. All that the Committee lacked were admissions, out of his own mouth, that the allegations against him were true. That is not fact-finding; that is simply exposure for exposure's sake.

C. Broad though the Congressional power of investigation undoubtedly is, it is still subject to limitations, notably that Congress cannot inquire into matters that are within the exclusive province of the Judiciary or Executive. *Barenblatt v. United States*, 360 U. S. 109, 111-112; *Watkins v. United States*, 354 U. S. 178, 187; *Quinn v. United States*, 349 U. S. 155, 161; *Tenney v. Brandhove*, 341 U. S. 367, 378. Here, as has been seen, the Committee undertook functions that belonged, not to Congress or its committees, but only to law enforcement officers, prosecutors, grand juries, and the judiciary. Accordingly, petitioner could rightfully refuse to answer.

III. A. A witness before a legislative committee, like a witness before a court, may invoke any privilege recognized by law as a ground for refusing to answer questions put to him. *Slagle v. Ohio*, 366 U. S. 259, 265. Certainly if the district judge here was right in ruling that petitioner's only relief was the Fifth Amendment's guarantee against self-incrimination, then this Court would not have needed to devote ten pages in *Barenblatt v. United States*, 360 U. S. 109, 125-134, to considering the merits of the First Amendment claim there involved. In any event, the law is plain that all of the Bill of Rights is available (*Barenblatt v. United States*, 360 U. S. 109, 112; *Watkins v. United States*, 354 U. S. 178, 188, 197; *Quinn v. United*

States, 349 U. S. 155, 161), and that necessarily includes the due process clause of the Fifth Amendment invoked by this petitioner.

B. Where, as here, the questions involved a deprivation of due process of law, the witness most assuredly is not required to place his refusal on only the ground that would aid the prosecution in a criminal case, in which he is already under indictment; as has been seen, petitioner's invocation of the privilege against self-incrimination could have been used against him had he later testified at his Indiana trial, a circumstance that necessarily would have limited his freedom of action there.

It is not necessary to speculate whether, in the face of *United States v. Murdock*, 284 U. S. 141, the Committee would have permitted petitioner to claim the privilege against self-incrimination in respect of the pending State indictment, as assuredly it permitted other witnesses to do, for the reason that, in the Committee Chairman's expressed view, such a claim was tantamount to an admission of guilt. That view, repeatedly expressed, runs counter to what this Court had previously held regarding the effect properly to be given to an invocation of that privilege. *Emspak v. United States*, 349 U. S. 190, 195; *Ullmann v. United States*, 350 U. S. 422; *Slochower v. Board of Education*, 350 U. S. 551, 557-558.

C. Petitioner's reliance on the due process clause is not an afterthought; it was specifically and repeatedly made throughout the hearing. He and his counsel contended throughout that answers to the questions now in issue would hurt him at the forthcoming State trial, while the Committee and its counsel insisted that there was no possible relationship between the two. That being so, petitioner is now entirely free to spell out that relationship in detail, and to particularize an objection that was originally summarized with comprehensive clarity.

ARGUMENT

This is a contempt of Congress case involving, not pertinency, not the First Amendment, not the privilege against self-incrimination, but rather the scope of the due process clause of the Fifth Amendment, in a situation where the witness was already under a State indictment, and where the Congressional committee, duly apprised of that fact, none the less insisted on answers that would demonstrably have injured the witness and aided the prosecution in the trial of that indictment.

We argue, therefore, that when any Congressional committee insists on answers that will facilitate the witness's conviction in a pending criminal prosecution, it is denying him due process of law, first, because it is thus improperly—and unlawfully—pretrying a criminal case.

We say, next, that such a procedure is improper because the committee is, inescapably, subjecting the witness to penalties. The circumstance that State rather than Federal penalties are involved seems to us immaterial; we urge that this Court reaffirm the rule laid down by Marshall, C. J., who held in *United States v. Saline Bank*, 1 Pet. 100, that a Federal court would not require answers that would subject a party to State penalties. We show, vouching to warranty the manuscript record in that case, that *Hale v. Henkel*, 201 U. S. 43, 70, was quite wrong in saying that in *Saline Bank* "the prosecution was under a state law which imposed the penalty, and that the Federal court was simply administering the state law." There was no prosecution, and the United States sought, on equitable principles, simply a money judgment. And we show that reaffirmance of Chief Justice Marshall's ruling is particularly appropriate here, where the expressed purpose of the Congressional committee, proved on this record, was to assist and encourage State prosecutions.

We then argue that this Committee, by undertaking to act as a grand jury, assumed powers granted only to the

Executive and the Judiciary, and thus acted beyond its jurisdiction. Its expressed purpose to make "further exposure" and "to search out and find if crime has been committed", purposes consistent with the authorizing resolution that directed it to investigate "the extent to which criminal . . . practices or activities are, or have been engaged in," show that the Committee was not pursuing a legitimate legislative activity when it asked petitioner the questions now under consideration.

Finally, there is the issue whether a witness who refuses to answer questions asked by a legislative committee is restricted to invoking the Fifth Amendment's guarantee against self-incrimination. We show that decisions here have already answered that question in the negative, and that the contrary holdings below are in consequence plainly wrong.

I. IT WAS A VIOLATION OF DUE PROCESS OF LAW FOR THE COMMITTEE TO REQUIRE PETITIONER TO ANSWER QUESTIONS THAT RELATED TO MATTERS COVERED BY THE STATE INDICTMENT AND THAT WOULD HAVE AIDED THE PROSECUTION IN THE TRIAL OF THAT INDICTMENT

A. ANSWERS TO THE QUESTIONS ASKED WOULD HAVE AIDED THE PROSECUTION IN THE TRIAL OF THE PENDING STATE INDICTMENT, AND THE PROSECUTION WOULD SIMILARLY HAVE BEEN AIDED IF PETITIONER HAD REFUSED TO ANSWER ON THE GROUND OF SELF-INCRIMINATION

The State indictment here in question (R. 182-189) was returned in Marion County, Indiana, on February 18, 1958 (R. 91).¹

The first count (R. 182-186) alleged that petitioner and two others unlawfully conspired to commit a felony, viz.,

¹ We do not understand this date to be in dispute, even though it only appears in a statement by Mr. Travis (R. 91), counsel for petitioner before the Committee (R. 90). In any event, the record shows that the indictment was handed down during the "January Term, 1958" (R. 182), a fact amply sufficient for our purposes.

to bribe a public officer; the conspiracy was alleged to have commenced on or about May 1, 1956 (R. 182), and the overt acts in pursuance thereof were alleged to have been committed in December 1956 and January 1957 (R. 185). The indictment alleged a continuing conspiracy but named no terminal date.

The second count (R. 186-189) alleged bribery of a named public officer by petitioner and the two other defendants; the date set forth for the offer to bribe was May 1, 1956 (R. 186), that for the actual payment was December 17, 1956 (R. 189). The subject-matter of both counts consisted of grants of rights-of-way over land in Lake County (R. 183, 187) and similar grants in Wayne County (R. 184-185, 187-189), while the locus of both offenses was alleged to be in Marion County (R. 182, 186), all in the State of Indiana.

The matters about which the Committee interrogated petitioner, whose refusal to answer forms the basis of the present Federal prosecution (R. 5-7), relate to events taking place in August 1957, "to aid and assist you in avoiding or preventing an indictment from being found against you" (R. 5, Count Two) in Lake County. The details appear at pp. 554-561 of the Committee's Second Interim Report (Sen. Rep. No. 621, Part 2, 86th Cong., 1st sess.), which was Government Exhibit 6 below, and at p. 592 of the same document, where it is said:

"From the evidence, the committee also finds that Maxwell C. Raddock was used by Hutcheson as a fixer in an attempt to head-off the indictment of Hutcheson, the Carpenter's vice president, O. William Blaier, and the treasurer, Frank Chapman."

Petitioner and his counsel repeatedly urged on the Committee that to require answers bearing on the alleged effort to head off the Lake County indictment had a bearing on the pending Marion County indictment (R. 93-94, 128,

132, 133, 134; see also R. 78, 81-86).² The Committee, which had indicated that it would not inquire directly as to any matters covered by the Marion County indictment (R. 97, 128; see also R. 77-78, 81, 84, 85), repeatedly insisted that the Lake County questions did not bear on and were entirely disassociated from the Marion County indictment (R. 97, 132, 132-133, 134; see also R. 81-82, 84-85, 86).

We can easily demonstrate that petitioner and his counsel were right in contending that answers to the questions about the Lake County transaction would hurt him in the Marion County prosecution, and that the Committee and its counsel were wrong in asserting the contrary.

First. It is settled Indiana law (*Davidson v. State*, 205 Ind. 564, 569, 187 N. E. 376, 378) that—

“Any statement or conduct of a person indicating a consciousness of guilt, where at the time or thereafter he is charged with or suspected of the crime, is admissible as a circumstance against him on trial. Evidence of circumstances, which are part of a person’s behavior subsequent to an event with which it is alleged or suspected he is connected with or implicated in, are relevant if the circumstances are such as would be natural and usual, assuming the connection or implication to exist.”

That rule has been applied in a variety of circumstances, making admissible in a criminal trial evidence that the

² While acting as counsel for petitioner’s co-defendant, Blaier, Mr. Travis had put the matter in these terms (R. 78):

“The charge is a conspiracy charge, and the indictment charge is a conspiracy charge, and it is very clear under Indiana criminal law that events which happen after the specific event charged in the indictment might be used by the prosecution to show the origin and continuance of the indictment, to relate it back.

“The matters that have been inquired about today in the hearing relate, to my mind, directly to the matters, to the transaction, for which he is indicted.”

defendant sought to bribe or intimidate witnesses (*Keesier v. State*, 154 Ind. 242, 56 N. E. 232), or to procure the absence of witnesses (*Eacock v. State*, 169 Ind. 488, 82 N. E. 1039; *Adams v. State*, 194 Ind. 512, 141 N. E. 460), or to manufacture or suppress evidence (*Perfect v. State*, 197 Ind. 401, 141 N. E. 52), or to suborn perjury (*Conway v. State*, 118 Ind. 482, 21 N. E. 285), or that the defendant fled or sought to flee the jurisdiction (*State v. Torphy*, 217 Ind. 383, 28 N. E. 2d 70; *Wilson v. State*, 222 Ind. 63, 51 N. E. 2d 848; *Barton v. State*, 154 Ind. 670, 57 N. E. 515; *Batten v. State*, 80 Ind. 394; *Porter v. State*, 2 Ind. 435), or that he resisted arrest (*Anderson v. State*, 147 Ind. 445, 46 N. E. 901; *Martin v. State*, 236 Ind. 524, 141 N. E. 2d 107, certiorari denied, 354 U. S. 927).

In all of these instances, defendant's conduct was admissible to show consciousness of guilt. Consequently quite apart from the circumstance that the conspiracy charged here (R. 182-186) was a continuous one, with no terminal date save that of the indictment itself, it is perfectly obvious that any evidence showing or tending to show that the present petitioner in August 1957 sought to head off an indictment in respect of acts over a period from May 1956 to January 1957 would be admissible to show a consciousness of guilt on his part in respect of these earlier acts.

That being so, such evidence would plainly have aided the prosecution at the trial of the Marion County indictment, even though the acts bore on an alleged effort to avoid being indicted in Lake County.

It follows that the use of the word "might" in the Government's formulation of the present question (Br. Op. 2), in terms of "because his testimony might relate to a state prosecution against him", does not so much state as beg the question. And the same is true of the Government's reference in its argument (Br. Op. 7) to "questions which might have disclosed information in some way relevant to the trial of the pending Indiana indictment." In the light

of the Indiana decisions set forth above, that information was clearly related and relevant to the State prosecution.

Second. As has been shown (*supra*, pp. 7-8, 10, 13-14), the witnesses Raddock and Sawochka were permitted to invoke their privilege against self-incrimination in respect of questions regarding the alleged effort to head off any indictment in Lake County, and Blaier was permitted to refuse to answer on grounds essentially similar to those thereafter relied upon by the petitioner (R. 82, 83, 84, 86).

It may be that petitioner might have been permitted by the Committee, a Federal agency, to claim a privilege against incriminating himself in respect of the pending State prosecution. But it is unnecessary to speculate on that point, because it is plain that, if he had invoked the privilege against self-incrimination, that fact could have been used against him at the trial of the Marion County indictment.

Whatever may be the present Federal law as to the use that can be made of a prior claim of the privilege against self-incrimination against a defendant who later testifies on his own behalf—and assuredly *Raffel v. United States*, 271 U. S. 494, has now but narrow authority after *Johnson v. United States*, 318 U. S. 189; *Grunewald v. United States*, 353 U. S. 391, 415-424; and *Stewart v. United States*, 366 U. S. 1—it is still law in Indiana that a plea of self-incrimination could be the subject of adverse inference if the witness elected to take the stand on his own behalf at a subsequent trial. See *State v. Schopmeyer*, 207 Ind. 538, 542-543, 194 N. E. 144, 146; *Watts v. State*, 226 Ind. 655, 663, 82 N. E. 2d 846, 849-850, reversed on other grounds *sub nom. Watts v. Indiana*, 338 U. S. 49. This much was admitted by the Government in the Court of Appeals in this case. U. S. Br. 26, note 8. And of course such an adverse inference at a trial in the Indiana courts would not violate the Fourteenth Amendment. *Adamson v. California*, 332 U. S. 46; *Twining v. New Jersey*, 211 U. S. 78.

Third. On the basis of the foregoing authorities we submit we have conclusively demonstrated that, had petitioner answered the questions now in issue, those answers would have aided the prosecution of the Indiana indictment which was then pending.

Actually, however, no such conclusive demonstration is necessary; all that is required is a showing that his answers *might* have aided the prosecution.

Here the analogy—and a very exact one—is the scope of the Fifth Amendment's guarantee against self-incrimination.

In (*Patricia*) *Blau v. United States*, 340 U. S. 159, this Court held that the privilege extended not only to answers that would in themselves support a conviction, but also to those that would furnish a link in the chain of evidence needed to prosecute. At the same Term, in *Hoffman v. United States*, 341 U. S. 479, 486-487, this Court said:

"However, if the witness, upon interposing his claim, were required to prove the hazard in the sense in which a claim is usually required to be established in court, he would be compelled to surrender the very protection which the privilege is designed to guarantee. To sustain the privilege, it need only be evident from the implications of the question, in the setting in which it is asked, that a responsive answer to the question or an explanation of why it cannot be answered *might* be dangerous because injurious disclosure *could* result."

We have added the italics, in view of the further comment (341 U. S. at 488) that "Petitioner could reasonably have sensed the peril of prosecution * * *."

The foregoing principles (which, incidentally, are law also in Indiana, see *Overman v. State*, 194 Ind. 483, 487, 490-491, 491, 143 N. E. 604, 605, 606, 606-607), have since been emphasized by this Court, both in *per curiam* reversals after argument (*Brunner v. United States*, 343 U. S. 918, reversing 190 F. 2d 167 (C.A. 9); *Greenberg v. United*

States, 343 U. S. 918, reversing 192 F. 2d 201 (C.A. 3)), as well as in a series of *per curiam* reversals simply on petitions for certiorari: *Singleton v. United States*, 343 U. S. 944, reversing 193 F. 2d 464 (C.A. 3); *Trock v. United States*, 351 U. S. 976, reversing 232 F. 2d 839 (C.A. 2); *Simpson et al. v. United States*, 355 U. S. 7, reversing *Simpson v. United States*, 241 F. 2d 222; *Wollam v. United States*, 244 F. 2d 212; and *McKenzie v. United States*, 244 F. 2d 712, all C.A. 9.

Accordingly, on any standard, petitioner amply established that answers to the questions asked him would have hurt him—and aided the prosecution—at the trial of the pending State indictment.

Fourth. We add, simply to show that the point has not been overlooked, that the Committee would not have been able to grant petitioner immunity had he been willing to answer. The statute which in *Adams v. Maryland*, 347 U. S. 179, was held to confer immunity “in any criminal proceeding against [the witness] in any court”—18 U. S. C. § 3486—has since been amended, see Sec. 1 of the Act of Aug. 20, 1954, c. 769, 68 Stat. 745, and, as it stood in its present form when petitioner refused to answer, was limited to specified offenses that did not include those for which he then stood indicted in Indiana. See, *accord*, *United States v. Baker*, C.A. 3, July 14, 1961, summarized in 30 U.S. Law Week 2054.

B. IT IS A VIOLATION OF DUE PROCESS OF LAW FOR A LEGISLATIVE COMMITTEE TO PRETRY A PENDING CRIMINAL CASE

So far as counsel are aware, this case presents the first instance where a Congressional committee, claiming powers of investigation, has confronted a witness with a statement of “background”, “information”, and specifications of “the subject matter being inquired into”, that expressly set forth the fact and circumstances of a felony indictment then pending against him in a State court; where the com-

mittee has then sought to elicit answers that would have aided the prosecution at the trial of such indictment, both substantively and adjectively; where the committee both before and during its interrogation of the witness under such indictment has publicly pilloried him with implications and averments of guilt in anticipation of his trial on the pending indictment; where the committee closed its interrogation of the witness with a public call for "further exposure" and with an offer to "help law enforcement officials in the state" in which the indictment had been returned; and where the witness was thereafter convicted of Contempt of Congress for refusal to assist the prosecution in such pending indictment.

Even in *Delaney v. United States*, 199 F. 2d 107, 115 (C. A. 1), where the committee also ignored the "difference between a legislative public hearing prior to indictment, and one where trial is impending under an existing indictment," the person under indictment was not questioned by the committee. That particular interference with the orderly processes of criminal justice has never, so far as we are aware, happened in any other instance save this one alone.

Where the witness has actually been indicted, he is already in the hands of the Executive and the Judiciary. Once he has been indicted, the Judiciary is "charged with the duty of assuring the defendant a fair trial before an impartial jury," and of determining "guilt or innocence solely on the basis of evidence to be presented at the impending trial." *Delaney, supra*, 199 F. 2d at 114. The matter is then *sub judice*.

Here, however, the Committee's announced subject-matter of inquiry (R. 21-24; quoted, *supra*, pp. 8-10) included the indictment pending against the petitioner, the factual matters alleged in and constituting its charges, and, in the course of the questioning of petitioner and of numerous other witnesses, matters which would have been admissible against petitioner at the trial.

Actually, petitioner's only role before the Committee was to submit to cross-examination regarding "information" as to criminality professed to have been received from unnamed and unidentified informants, formulated in fact as an indictment upon an indictment, and formulated in law, see Point IA, *supra* pp. 35-41, as matter prejudicial to him at the trial of the pending indictment. In substance and effect, petitioner's appearance before the Committee was a highly publicized legislative trial in advance of his judicial trial, with no content or procedure other than an *ex parte* cross-examination of the accused—and a trial at which the Committee framed the charges, prosecuted the petitioner, fashioned its own procedures, laid down its own rules of substantive and adjective law alike, proclaimed guilt (in part because preceding witnesses had invoked a privilege against self-incrimination), publicly exhorted law enforcement officials to "further exposure" (R. 153) and prosecution in cooperation with the Committee (R. 153-154), then publicly rendered a verdict against petitioner as he was leaving the stand (R. 152-154), and, finally, entered a solemn judgment of guilt in writing in its Second Interim Report. This document (Sen. Rep. 621, Part 2, 86th Cong., 1st sess.), which became Government Exhibit 6 at the trial (R. 161-162, 166, 171), said this (pp. 590, 592) under the heading of "Findings—Maxwell C. Raddock and the United Protherhood of Carpenters and Joiners of America":

"From the evidence, the committee also finds that Maxwell C. Raddock was used by Hutcheson as a fixer in an attempt to head-off the indictment of Hutcheson, the Carpenter's vice president, O. William Blaier, and the Treasurer, Frank Chapman."

Such a pronouncement of guilt by legislative action without and in advance of a judicial trial is, at the very least, in the nature of the prohibited bill of attainder. Cf. *United States v. Lovett*, 328 U. S. 303; *Cummings v. Missouri*, 4 Wall. 277; *Ex parte Garland*, 4 Wall. 333.

What was said in *Delaney*—a decision, be it noted, that the Government did not seek to have reviewed here—stands as an appropriate commentary on the Committee's dealing with this petitioner (199 F. 2d at 110):

"In this respect the committee hearing afforded the public a preview of the prosecution's case against Delaney without, however, the safeguards that would attend a criminal trial."

We submit that the Committee's pretrial of the pending criminal indictment against petitioner so far violated fundamental standards of fairness as to amount to a denial of due process of law. For, as this Court long ago said in *Kilbourn v. Thompson*, 103 U. S. 165, 182, the due process clause itself is "the strongest implication against punishment by order of the legislative body. It has been repeatedly decided by this court and by others of the highest authority that this means a trial in which the rights of the party shall be decided by a tribunal appointed by law, which tribunal is to be governed by rules of law previously established."

First. Prejudgment by the press of the guilt of an accused person has long bedevilled American justice. Cf. *Stroble v. California*, 343 U. S. 181; *Shepherd v. Florida*, 341 U. S. 50; Frankfurter, J., in *Maryland v. Baltimore Radio Show*, 338 U. S. 912. On two recent occasions, this Court on direct appeal has reversed convictions where "prejudicial newspaper intrusion . . . poisoned the outcome." *Janko v. United States*, 366 U. S. 716; *Marshall v. United States*, 360 U. S. 310. And, only last June, this Court on collateral review set aside a State conviction where the quantum of adverse newspaper publicity precluded impanelling an impartial jury. *Irvin v. Dowd*, 366 U. S. 717.

The Committee's legislative adjudication of petitioner's guilt here was publicly announced in the presence of members of the press (R. 152). But the real variant in the present case is that the outcome of petitioner's pending

trial was poisoned, not by newspapers acting on their own, but by the Committee itself. This, indeed, is an issue now pending before this Court in *Beck v. Washington*, No. 40, this Term, in respect of Question 1(b) of that case.³

We submit that the basic issue in cases such as this one, *Beck v. Washington*, and *Delaney v. United States*, 199 F. 2d 107, *supra*, is not so much whether the preliminary legislative publicity on a fair appraisal is sufficient to vitiate the trial, it is rather whether the legislature may properly pretry a criminal case at all.

In the *Delaney* case, the indicted person was not called as a witness before the Committee, and hence was never interrogated there. In the *Beck* case, the defendant was not being prosecuted for contempt of Congress. But here, where just such a prosecution is involved, and where accordingly the scope of Congressional power is in question, we urge the formulation of a restriction that will forever preclude legislative pretrial of criminal cases.

Second. In *McGrain v. Daugherty*, 273 U. S. 135, 179-180, this Court said:

"We think the resolution and proceedings give no warrant for thinking the Senate was attempting or intending to try the Attorney General at its bar or before its committee for any crime or wrongdoing. Nor do we think it a valid objection to the investigation that it might possibly disclose crime or wrongdoing on his part."

³ See 365 U. S. at 867: "(b) Was it a denial of due process and equal protection as guaranteed by the Fourteenth Amendment for the Court, in the course of instructing the grand jury, to make statements of an inflammatory nature, prejudicial to petitioner, including a statement that testimony before a United States Senate Committee had disclosed that officers of the Teamsters Union (including petitioner) '... had, through trick and device, embezzled or stolen hundreds of thousands of dollars of the funds of that union—money which had come to the union from dues of its members ...?'"

Here, we submit, the proceedings reflect not only an intention or an attempt on the part of the Committee to try petitioner at its bar, they show a full-blown legislative trial, terminating with a formal finding of guilt in the Committee's Second Interim Report.

Moreover, in *Sinclair v. United States*, 279 U. S. 263, 295, this Court said:

"It may be conceded that Congress is without authority to compel disclosures for the purpose of aiding the prosecution of pending suits; but the authority of that body, directly or through its committees, to require pertinent disclosures in aid of its own constitutional power is not abridged because the information sought to be elicited may also be of use in such suits."

In the present case, the statements made by the Committee Chairman, both at the close of petitioner's testimony (R. 152-154) as well as on the stand (R. 165), leave no doubt that one of the principal purposes of the hearings was in fact to aid the prosecution of criminal cases. For, as the Committee Chairman said on the latter occasion (R. 165), "Our legislative purpose is to search out and find if crime has been committed."

Even so, the *Sinclair* analogy is not an accurate one. For the *Sinclair* case did not involve pending criminal prosecutions, but only a pending civil action (279 U. S. at 295, as to which see *Mammoth Oil Co. v. United States*, 275 U. S. 13). It follows that the Government is demonstrably wrong in saying (Br. Op. 8) that "In *Sinclair v. United States*, 279 U. S. 263, this Court made clear that a congressional committee can investigate matters which relate to pending criminal cases," and in saying further (Br. Op. 9), "The fact that this information also related to a pending criminal indictment is not material. *Sinclair v. United States*, *supra*."

We repeat, *Sinclair v. United States*, 279 U. S. 263, did not deal with any pending criminal case. In *Sinclair*, there was no indictment, so that the constitutional rights that protect an indicted defendant, and the executive and judicial powers that are exerted against him at his trial, were not before this Court. Hence *Sinclair* did not deal with the problem of legislative pretrial of pending criminal prosecutions. Moreover, one basis of *Sinclair's* refusal to answer was his contention that the committee's power to investigate had been exhausted (279 U. S. at 290).

It is true that in *Delaney v. United States*, 199 F. 2d 107, 114, *supra*, the First Circuit said:

"We mean to imply no criticism of the action of the King Committee. We have no doubt that the committee acted lawfully, within the constitutional powers of Congress duly delegated to it."

But, since the appellant Delaney was never called as a witness before that committee, the quoted observation was plainly *obiter*, and accordingly amounted to no more than a concession *arguendo*.

C. IT IS A VIOLATION OF DUE PROCESS OF LAW FOR ANY AGENCY OF THE UNITED STATES TO REQUIRE A CITIZEN TO SUBJECT HIMSELF TO PENALTIES BY A STATE OF THE UNION, PARTICULARLY WHEN, AS HERE, THE FEDERAL AGENCY FRANKLY SEEKS TO INSTIGATE AND ASSIST STATE PROSECUTIONS

- (1) It is unfair, and hence a violation of due process, to put a witness in a situation where, regardless of what he does, he will be subjected to penalties

But petitioner's treatment by the Committee also violated the due process clause in another significant respect.

Passing the State-Federal problem for the moment—and it will be fully dealt with below—we have here a situation where a witness like the petitioner is impaled on the horns of a dilemma simply by being required to appear: he is virtually bound to incriminate himself no matter what he

does. If he answered the questions, he would have helped the pending prosecution, and thus have strengthened the possibility that he would be sent to jail. If he answered falsely, he would have committed perjury in violation of 18 U. S. C. § 1621, and similarly assured himself of being sent to jail. And, not having answered at all, he has been successfully prosecuted for contempt of Congress in violation of 2 U. S. C. § 192, and has been sentenced to both fine and imprisonment (E. 189-190).

Otherwise stated, the mere fact of calling him as a witness has necessarily and inescapably subjected him to penalties, regardless of what course he pursued once he was on the stand. The same consequence would be visited upon any other witness—except of course one whose past could not possibly expose him to jeopardy. We submit that such a procedure is so fundamentally unfair as to involve a deprivation of due process of law.

In a situation where the circumstances were perhaps more dramatic but where the witness's only risk of self-incrimination involved a Federal crime, the Sixth Circuit, reversing a conviction for contempt of Congress, said (*Atiappa v. United States*, 201 F. 2d 287, 300):

"Despite the enjoyment by millions of spectators and auditors of the exhibition by television of the confusion and writhings of widely known malefactors and criminals, when sharply questioned as to their nefarious activities, we are unable to give judicial sanction, in the teeth of the Fifth Amendment, to the employment by a committee of the United States Senate of methods of examination of witnesses constituting a triple threat: answer truly and you have given evidence leading to your conviction for a violation of federal law; answer falsely and you will be convicted of perjury; refuse to answer and you will be found guilty of criminal contempt and punished by fine and imprisonment. In our humble judgment, to place a person not even on trial for a specified crime in such predicament is not only not a manifestation of fair play, but is in

direct violation of the Fifth Amendment to our national Constitution."

The Court of Appeals directed the entry of a judgment of acquittal, and the Government did not seek review.

Is the present situation different because the answers sought to be obtained here would have led to the witness's conviction for a violation of State rather than Federal law? We submit that it should not be, for reasons about to be stated.

(2) A Federal agency cannot, consistently with fundamental fairness, force a citizen into a State jail

Under the present heading we are not dealing here with any question of the extent of the guarantee against self-incrimination that the States must grant an individual, such as was involved in *Twining v. New Jersey*, 211 U. S. 78; *Adamson v. California*, 332 U. S. 46; *Knapp v. Schweitzer*, 357 U. S. 371; and, just at the last Term, in *Cohen v. Hurley*, 366 U. S. 117. Nor do we have the question of how far the United States may use self-incriminating testimony obtained by a State's compulsory process. *Feldman v. United States*, 322 U. S. 487. Rather, the issue here is whether the United States may, consistently with due process of law, place a witness in a predicament where he will certainly be punished by the United States if he fails to answer and will increase the possibility that he will be punished by a State of the Union if he does.

We are aware that *United States v. Murdock*, 284 U. S. 141, and *Hale v. Henkel*, 201 U. S. 43, answer that question in the affirmative, certainly in a situation where the witness has not yet been prosecuted for any State offense, where he only apprehends the danger that such a prosecution is likely to follow once he testifies. Here, however, petitioner had actually been indicted by a State grand jury. We submit that this central fact adds up to a difference of substance. If, however, the Court is of the view that the

difference in the scope of State incrimination in the two situations amounts only to one of degree, then we are constrained to argue that both *United States v. Murdock* and *Hale v. Henkel* were wrongly decided.

a. *United States v. Murdock* rested on a double misreading of English law.

In the *Murdock* case, this Court squarely held that a witness questioned by a Federal officer, there an internal revenue Agent, could not refuse to answer questions because the giving of the information required might subject him to prosecution under State law. This Court said (284 U. S. at 149):

"Investigations for federal purposes may not be prevented by matters depending upon state law. Constitution Art. VI, § 2. The English rule of evidence against compulsory self-incrimination, on which historically that contained in the Fifth Amendment rests, does not protect witnesses against disclosing offenses in violation of the laws of another country. *King of the Two Sicilies v. Wilcox*, 7 State Trials (N. S.) 1050, 1068; *Queen v. Boyes*, 1 B. & S. 311, 330. This court has held that immunity against state prosecution is not essential to the validity of federal statutes declaring that a witness shall not be excused from giving evidence on the ground that it will incriminate him, and also that the lack of state power to give witnesses protection against federal prosecution does not defeat a state immunity statute. The principle established is that full and complete immunity against prosecution by the government compelling the witness to answer is equivalent to the protection furnished by the rule against compulsory self-incrimination. *Counselman v. Hitchcock*, 142 U. S. 547; *Brown v. Walker*, 161 U. S. 591, 606; *Jack v. Kansas*, 199 U. S. 372, 381; *Hale v. Henkel*, 201 U. S. 43, 68. As appellee at the hearing did not invoke protection against federal prosecution, his plea is without merit and the government's demurrer should have been sustained."

We will show, first, that the foregoing involves a misreading of the substantive English law, and second, that

the analogy of the English decisions is demonstrably inapposite.

First. The first English case on the extra-territorial scope of self-incrimination is *East India Company v. Campbell*, 1 Ves. Sr. 246, 247, decided in 1749, which allowed the privilege to a witness in England in respect of possible prosecution both in British India and in Ireland.

A century later, in what has become the leading case of *King of the Two Sicilies v. Willcox*, 1 Sim. (N.S.) 301, 7 St. Tr. N.S. 1050, the court allowed discovery as to matters that might incriminate the witnesses if they went to the Two Sicilies. The ruling rested in part on the proposition that, since foreign law was a question of fact, an English court could not know whether the answers would actually be incriminating. The Vice-Chancellor said (1 Sim. (N.S.) at 330, 7 St. Tr. N. S. at 1069),

"No Judge can know, as matter of law, what would or would not be penal in a foreign country; and he cannot, therefore, form any judgment as to the force or truth of the objection of a witness, when he declines to answer on such a ground."

The Queen v. Boyes, 1 Best & S. 311, also relied on in the *Murdock* case, is hardly in point. There a witness had been pardoned in respect of the matter about which he was questioned, but refused to answer because of fear of impeachment. It was held that he had no reasonable ground to apprehend danger from such an improbable contingency.

The English case completely in point, but not cited in *Murdock*, is *United States v. McRae*, L. R. 4 Eq. 327, affirmed in part, L. R. 3 Ch. App. 79. There the United States brought a bill praying an account of all money received by the defendant as agent of the then defunct Confederate States. The defendant pleaded that his property would be subject to forfeiture under an Act of Congress, §§ 5-8 of the Act of July 17, 1862, c. 195, 12 Stat.

589, 590-591, and that he had received no pardon pursuant to § 13 of that Act, 12 Stat. at 592. Both English courts held that, since the foreign penalty was plainly established, the plea of privilege was good. Lord Chelmsford, L. C., said (L. R. 3 Ch. App. at 87):

"It is a case entirely distinguishable from *King of the Two Sicilies v. Willcox*. There it was not shown that the Defendants had rendered themselves liable to criminal prosecution. Here the plea alleges the particular ground of liability to forfeiture, and that proceedings have actually been taken and are pending to enforce it. There it was doubtful whether the Defendants would ever be within the reach of a prosecution, and their being so depended on their voluntary return to their own country. Here the subject of the forfeiture is within the power of the *United States*, and the proceedings against the Defendant would be equally effectual whether he remains here or returns to the country where his property is situate.

"Under these peculiar circumstances I cannot distinguish the case in principle from one where a witness is protected from answering any question which has a tendency to expose him to forfeiture for a breach of our own municipal law."

Otherwise stated, the English law is that self-incrimination under foreign law is unavailable as a defense only when the danger is remote or when the foreign law cannot be proved.

We submit, therefore, that the substantive English law does not support either the reasoning or the result in *United States v. Murdock*.

Second. But there is a more fundamental reason why no English decision justifies the *Murdock* holding, namely, that State law is not foreign law so far as any agency of the United States is concerned. To the extent that the difference between *King of the Two Sicilies v. Willcox* and *United States v. McRae* turns on a question of proof, viz.,

the common law concept of foreign law as a fact to be proved like any other fact, that issue is not present when State law comes into question, for two reasons.

The first and obvious reason is that tribunals of the United States judicially notice the laws of every State. E.g., *United States v. Turner*, 11 How. 663; *Hanley v. Donoghue*, 116 U. S. 1; *Fourth Nat. Bank v. Francklyn*, 120 U. S. 747. The second and more fundamental reason is that the United States and the several States are not foreign nations *vis-à-vis* each other.

When the Supreme Court of Rhode Island refused to enforce the Emergency Price Control Act of 1942 on the ground that it was the penal statute of a foreign sovereign, this Court, saying that "Such a broad assumption flies in the face of the fact that the States of the Union constitute a nation", promptly reversed. *Testa v. Katt*, 330 U. S. 386, 389. We submit that the *Murdock* decision, which treated the laws of the several States as foreign law on the basis of the *King of the Two Sicilies* case, rested, like the Rhode Island ruling that was reversed, on a misconception of the nature of the Federal system.

Third. To the extent that the United States may properly require a witness to incriminate himself under State law, so a State should be able to require him to submit to penalties under Federal law. But an increasing number of States are protecting their witnesses against incrimination under Federal law, not on abstract grounds, but because of their recognition of the basic concept of Federalism.

Michigan was the first jurisdiction to hold that the privilege of a witness against self-incrimination accorded by its State constitution extended to protect a State witness from testifying as to matters that might tend to incriminate him in a pending prosecution in a Federal court under a law of the United States. *People v. Dew Uyl*, 318 Mich. 645, 29

N. W. 2d 284. The court said (318 Mich. at 651, 29 N. W. 2d at 287):

"It seems like a travesty on verity to say that one is not subjected to self-incrimination when compelled to give testimony in a State judicial proceeding which testimony may forthwith be used against him in a Federal criminal prosecution. And it is self evident that the immunity granted under a State statute would be of no avail in a Federal prosecution."

Accord: *People v. Hoffa*, 318 Mich. 656, 29 N. W. 2d 292.

The *Des Uyl* case has been followed by the courts of last resort of three States:

(1) *Florida*, see *State v. Kelly*, Fla., 71 So. 2d 887, 895-897; *Lorenzo v. Blackburn*, Fla., 74 So. 2d 289 (denied on the facts); *Beynton v. State*, Fla., 75 So. 2d 211 (injunction based on purchase of a Federal gambling stamp, reversed).

(2) *Kentucky*, see *Commonwealth v. Rhine*, Ky., 303 S. W. 2d 301, 304, where the Kentucky Court of Appeals said:

"We believe that to render effective the quoted Constitutional provision against self-incrimination, it is essential that it apply to prosecutions by the United States as well as to those by the Commonwealth. To hold otherwise would be to ignore the fact that our citizens are in a very real sense, as well as in a technical one, citizens of both the State of Kentucky and of the United States. The jurisdiction of both governments is coextensive."

This is realistic, sturdy Federalism, such as was unhappily ignored in *United States v. Murdock*.

(3) *Louisiana*, see *State v. Doran*, 215 La. 151, 39 So. 2d 894 (privilege recognized as to prosecution in California); *State v. Dominguez*, 228 La. 284, 82 So. 2d 12 (same, as to offense under pending Federal indictment); *State v. Ford*, 233 La. 992, 99 So. 2d 320 (*Dominguez* rule limited to situa-

tion where accused is actually under Federal indictment); *Mills v. Louisiana*, 360 U. S. 230 (semble, same as preceding).

Three legislatures have likewise adopted the broader rule:

(1) *California*, see Calif. Penal Code, § 1324, as amended by Calif. Stats. 1957, c. 2395, p. 4138, § 1 ("or could subject the witness to a criminal prosecution in another jurisdiction").

(2) *Illinois*, see Ill. Rev. Stat. 1953, c. 38, § 580a, as added by Ill. Laws 1953, p. 31, § 1 ("or otherwise would subject such witness to an indictment, information or prosecution . . . under the laws of another State or of the United States"); see *People v. Burkert*, 7 Ill. 2d 506, 131 N. E. 2d 495.

(3) *New Jersey*, see N. J. Stat. Ann., § 2A:84A-18, as added by N. J. Laws 1960, c. 52, § 18 ("a matter will incriminate (a) if it constitutes an element of crime against this State, or another State, or the United States").

b. *Hale v. Henkel* rested on a like misreading of English law and also on a misreading of United States v. Saline Bank.

In *Hale v. Henkel*, 201 U. S. 43, this Court held that a witness before a Federal grand jury under a Federal immunity statute could not refuse to answer because his replies might subject him to State prosecution. This Court adverted to the then recent case of *Jack v. Kansas*, 199 U. S. 372, saying (201 U. S. at 68-69):

"It was held both by this court and by the Supreme Court of Kansas that the possibility that information given by the witness might be used under the Federal act did not operate as a reason for permitting the witness to refuse to answer, and that a danger so unsubstantial and remote did not impair the legal immunity. Indeed, if the argument were a sound one it might be carried still further and held to apply not only to state

prosecutions within the same jurisdiction, but to prosecutions under the criminal laws of other States to which the witness might have subjected himself. The question has been fully considered in England, and the conclusion reached by the courts of that country that the only danger to be considered is one arising within the same jurisdiction and under the same sovereignty. *Queen v. Boyes*, 1 B. & S. 311; *King of the Two Sicilies v. Willcox*, 7 State Trials (N. S.) 1049, 1068; *State v. March*, 1 Jones (N. Car.) 526; *State v. Thomas*, 98 N. Car. 599."

Here again, this Court failed to pay heed to the later case of *United States v. McRae*, L. R. 4 Eq. 327, affirmed in part, L. R. 3 Ch. App. 79. The quoted excerpt therefore does not accurately set forth the English law, nor does it note the obvious difference between Great Britain as against the Two Sicilies and the United States as against a State of the Union.

But that is not the only misreading we discern in *Hale v. Henkel*. In the very next paragraph following the one just quoted, Mr. Justice Brown said (201 U. S. at 69):

"The case of *United States v. Saline Bank*, 1 Pet. 100, is not in conflict with this. That was a bill for discovery, filed by the United States against the cashier of the Saline Bank, in the District Court of the Virginia District, who pleaded that the emission of certain unlawful bills took place within the State of Virginia, by the law, whereof penalties were inflicted for such emissions. It was held that defendants were not bound to answer and subject them to those penalties. It is sufficient to say that the prosecution was under a state law which imposed the penalty, and that the Federal court was simply administering the state law, and no question arose as to a prosecution under another jurisdiction."

The foregoing passage demonstrably misinterprets the *Saline Bank* case.

That case, as the report in the 1st of Peters shows, was "a bill against John Webster, Cashier, and a number of

others, as stockholders of the Virginia Saline Bank, to charge them in their private capacities, for certain deposits of money made with them, and also to subject their joint funds, &c."

The suit was brought in the District Court of the United States for the Western District of Virginia by the United States Attorney for that district to recover funds deposited by or on behalf of the Treasurer of the United States with the bank. The defendants pleaded (1 Pet. at 102) that

"these defendants are advised, and insist, that they ought not to be compelled to discover, or set forth any matters, whereby they may impeach or accuse themselves of any offence or crime, or be liable by the laws of the commonwealth of Virginia, to penalties and grievous crimes; for which cause, these defendants humbly pray the judgment of this honorable Court, whether they shall be compelled to make any other or further answer to said bill of complaint, and humbly pray to be hence dismissed, &c."

The Virginia statute then in force, set out in the report (1 Pet. at 102-104), made the carrying on of a banking business by an unincorporated association such as the Saline Bank a misdemeanor, declared its contracts void, and provided for civil penalties. The District Court sustained the plea and dismissed the bill, whereupon the United States appealed.

Otherwise stated, in a suit by the United States in a Federal court to recover on a claim of the United States, the defendants pleaded that answering the bill would subject them to State penalties. But this Court affirmed the decree of dismissal. Chief Justice Marshall said (1 Pet. at 104):

"This is a bill in equity for a discovery and relief. The defendants set up a plea in bar, alleging that the discovery would subject them to penalties under the statute of Virginia.

"The Court below decided in favor of the validity of the plea, and dismissed the bill.

"It is apparent that in every step of the suit, the facts required to be discovered in support of this suit would expose the parties to danger. The rule clearly is, that a party is not bound to make any discovery which would expose him to penalties, and this case falls within it."

Accordingly, this Court affirmed the judgment of dismissal.

Yet Mr. Justice Brown later said in *Hale v. Henkel* (201 U. S. at 70):

"It is sufficient to say that the prosecution was under a state law which imposed the penalty, and that the Federal court was simply administering the state law, and no question arose as to a prosecution under another jurisdiction."

The Federal court was plainly doing no such thing. The Federal court was hearing a Federal claim, the claim of the United States to recover its deposits (cf. *Clearfield Trust Co. v. United States*, 318 U. S. 363), whereas any prosecution for the Virginia misdemeanor must have been brought in the Virginia courts, and was not involved in the Federal suit.

Moreover, the Virginia statute, set out at pp. 102-104 of 1 Peters, provided for a suit to be brought by the Attorney General of Virginia in the Superior Court of Chancery for the District of Richmond, and contained a specific proviso that "no disclosure made by any party defendant to such suit in equity, and no books or papers exhibited by him in answer to the bill, or under the order of the Court, shall be used as evidence against him in any motion or prosecution under this law." Consequently if, as was later said in *Hale v. Henkel*, that in the *Saline Bank* case "The Federal court was simply administering the state law", any disclosure by the defendants could not possibly have incriminated them. It is therefore entirely plain, on this

approach also, that the Federal court could not possibly have been administering State law.

In order to remove the discussion of the *Saline Bank* case from the realm of dialectic to that of fact, we have examined the original papers in that case, which are now in the National Archives, and we have printed in full in the Appendix hereto, at pp. 86-89, *infra*, the bill of complaint therein.

That document makes it clear that the United States did not rest its claim for relief on the provisions of any State statute, but simply asked a money judgment against the stockholders, on the theory that they had fraudulently conspired with each other to withhold the funds in their hands from application to the draft and deposit and notes taken in due course of business by the United States.

The bill of complaint plainly shows that the United States was not asking for either penalties or forfeitures, and that the State statute was in the case only because answers to the interrogatories (*infra*, p. 90) would have subjected the defendants to penalties under the State statute.

It is therefore quite wrong to say (*Hale v. Henkel*, 201 U. S. at 70) that "the prosecution was under a state law which imposed the penalty, and that the Federal court was simply administering the state law." There was no prosecution, and the Federal court was in no sense administering the State law that imposed the penalty.

That this is the proper reading of the *Saline Bank* case was also noted in the volume just before the one containing *Hale v. Henkel*, namely, in *Ballmann v. Fagin*, 200 U. S. 186. There Mr. Justice Holmes, speaking for the Court said (200 U. S. at 195-196):

"As we have said, [Ballmann] set forth that there were many proceedings on foot against him as party to a 'bucket shop', and so subject to the criminal law of the State in which the [Federal] grand jury was sitting.

According to *United States v. Saline Bank*, 1 Peters, 100, he was exonerated from disclosures which would have exposed him to the penalties of the state law. See *Jack v. Kansas*, 129 U. S. 372, decided this term. One way or the other we are of opinion that Ballmann could not be required to produce his cash book if he set up that it would tend to criminate him."

(3) This Court should reaffirm the petiti^on Federalism of the Great Chief Justice

We have shown that the reasons given in the *Murdock* and *Hale* cases, for holding that a plea of self-incrimination made by a witness before a Federal tribunal does not protect him from incriminating himself in respect of State prosecutions, will not withstand analysis.

Here, however, petitioner specifically waived any reliance on the privilege against self-incrimination (R. 125, 127), placing his objection solely on the ground of due process (R. 121-122, 123, 124-125), namely, that each question now in issue "relates or might be claimed to relate to or aid the prosecution of the case in which I am under indictment and thus be in denial of due process of law."

Thus there is raised a question of fundamental fairness, involving here the scope of another clause of the Fifth Amendment, the one protecting against a denial of due process of law.

We ask, Is it consistent with fundamental fairness to insure that a witness before a Congressional committee, situated as petitioner was, is virtually bound to go to jail simply because he appears pursuant to a subpoena? For that is what is actually involved here: No matter what petitioner could have said or done, punishment followed with virtual inevitability from the interrogation to which he was subjected.

Resolution of the question just put requires an analysis of the numerous decisions of this Court holding that the due process clause of the Fourteenth Amendment does not include any privilege against self-incrimination.

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First. Only at the last Term (*Cohen v. Hurley*, 366 U. S. 117, 127-129), this Court cited *Twining v. New Jersey*, 211 U. S. 78, and *Adamson v. California*, 332 U. S. 46, for the proposition that the Fourteenth Amendment did not grant a Federal constitutional right to a witness not to be required to incriminate himself in a State proceeding. With deference, the proposition was too broadly stated, for all that was involved in *Twining* and in *Adamson* was the prosecution's comment on the accused's failure to take the stand, a very different matter.

Indeed, whether the Fifth Amendment's guarantee against self-incrimination extends far enough to preclude similar comment by Federal prosecutors has never been squarely decided, nor could it have been, for the Federal statute, ever since Federal criminal defendants were first granted the right to testify, has always specifically prohibited such comment. Act of March 16, 1878, c. 37, 20 Stat. 30, now 18 U. S. C. § 3481 ("His failure to make such request shall not create any presumption against him."); see *Bruno v. United States*, 308 U. S. 287.

Insofar as other cases appear to lay down any broader rule, the expressions are not only *obiter* but expand the prior decisions. Thus, in *Snyder v. Massachusetts*, 291 U. S. 97, 105, it was said that "The privilege against self-incrimination may be withdrawn and the accused put upon the stand as a witness for the state," citing *Twining v. New Jersey*—which did not involve any such step. The comments in *Brown v. Mississippi*, 297 U. S. 278, 285; *Palko v. Connecticut*, 302 U. S. 319, 323-324; and *Knapp v. Schweitzer*, 357 U. S. 371, 374, stand on no higher ground.

We submit that nothing in the *Twining* or *Adamson* holdings requires this Court to sustain a proceeding such as the one now under consideration, where Federal power is consciously exerted to force into a State jail one who has simply been called as a witness before a Congressional committee.

Second. Cases like *Jack v. Kansas*, 199 U. S. 372, need not detain us long; the rationale there was that the State witness could not claim his privilege in respect of a Federal prosecution of which, according to this Court (199 U. S. at 382), there was no "real danger." Here, on the other hand, the State prosecution had already commenced, an indictment had actually been returned, and the answers to the questions now in issue were clearly admissible against petitioner at the State trial.

Third. Finally, *Cohen v. Hurley*, 366 U. S. 117, is distinguishable because there the petitioner faced, not a criminal prosecution, but disbarment. It seems sufficient to remark that to hold a lawyer, a member of a highly privileged profession, to a duty of full and frank disclosure to the courts in respect of asserted professional misconduct, does not inexorably compel the conclusion that a similar ruling must be applied to a layman actually under indictment. For, as this Court said (366 U. S. at 131),

"On the basis of the factual distinctions that we have mentioned above, we consider that a State can constitutionally afford a different procedure—the present procedure—in those judicial investigations from that in criminal prosecutions."

Fourth. What is left to be reconsidered, therefore, is the rationale of *United States v. Murdock*, 284 U. S. 141, and of *Hale v. Henkel*, 201 U. S. 43, both of which, as we have shown above, pp. 50-59, rest upon misreadings of the decisions severally relied upon, and upon dangerously inaccurate analogies. There must also be reconsidered the *sequelae* of those cases, of which those currently most cited are *Feldman v. United States*, 322 U. S. 487, and *Knepp v. Schweitzer*, 357 U. S. 371. See also *Nills v. Louisiana*, 360 U. S. 230.

In asking such reconsideration, we vouch to warranty the words of Mr. Justice Brandeis in *Burnet v. Coronado Oil & Gas Co.*, 285 U. S. 393, 405, 406-410, 412-413:

"*Stare decisis* is usually the wise policy, because in most matters it is more important that the applicable rule of law be settled than that it be settled right. Compare *National Bank v. Whitney*, 103 U. S. 99, 102. This is commonly true even where the error is a matter of serious concern, provided correction can be had by legislation. But in cases involving the Federal Constitution, where correction through legislative action is practically impossible, this Court has often overruled its earlier decisions. The Court bows to the lessons of experience and the force of better reasoning, recognizing that the process of trial and error, so fruitful in the physical sciences, is appropriate also in the judicial function. Compare *Brinkerhoff-Post Trust & Savings Co. v. Hill*, 281 U. S. 673, 681. Recently, it overruled several leading cases, when it concluded that the States should not have been permitted to exercise powers of taxation which it had theretofore repeatedly sanctioned. In cases involving the Federal Constitution the position of this Court is unlike that of the highest court of England, where the policy of *stare decisis* was formulated and is strictly applied to all classes of cases. Parliament is free to correct any judicial error; and the remedy may be promptly invoked.

"The reasons why this Court should refuse to follow an earlier constitutional decision which it deems erroneous are particularly strong where the question presented is one of applying, as distinguished from what may accurately be called interpreting, the Constitution. In the cases which now come before us there is seldom any dispute as to the interpretation of any provision. The controversy is usually over the application to existing conditions of some well-recognized constitutional limitation. This is strikingly true of cases under the due process clause when the question is whether a statute is unreasonable, arbitrary or capricious; of cases under the equal protection clause when the question is whether there is any reasonable basis for the classification made by a statute; and of cases under the commerce clause when the question is whether an admitted burden laid by a statute upon

interstate commerce is so substantial as to be deemed direct."

"In cases involving constitutional issues of the character discussed, this Court must, in order to reach sound conclusions, feel free to bring its opinions into agreement with experience and with facts newly ascertained, so that its judicial authority may, as Mr. Chief Justice Taney said, 'depend altogether on the force of the reasoning by which it is supported.'"⁴

We do not apologize for quoting in this instance from a dissenting opinion—because, within less than six years, the majority opinion in *Barnes v. Coronado Oil & Gas Co.* was squarely overruled. *Helvering v. Mountain Producers Corp.*, 303 U. S. 376, 387.

Fifth. To suggest (*Kwapp v. Schweitzer*, 357 U. S. 371, 374; *Cohen v. Hurley*, 355 U. S. 117, 127-128) that the scope of the Due Process clause in respect of self-incrimination became settled for all time in *Twining v. New Jersey*, 211 U. S. 78, is surely too rigid a process of constitutional interpretation, on a par with the suggestion that the scope of Due Process in connection with unreasonable searches and seizures became forever fixed by what was said in *Weeks v. United States*, 232 U. S. 383, 398. It did not require *Elkins v. United States*, 364 U. S. 206, much less *Mapp v. Ohio*, 367 U. S. 643, to demonstrate the unboundness of any such view; *Wolf v. Colorado*, 338 U. S. 25, quite sufficed to demonstrate that the Fourteenth Amendment was still pliable enough to include the substance of the Fourth.

Nor is it necessary to determine whether or not the Fourteenth Amendment now includes all of the Fifth Amendment's clause against self-incrimination; that question may well be left until another day. Indeed, only at the last Term, there was a clear indication that a State's power

⁴Footnotes omitted.

to force incriminatory testimony is not unlimited." In this case we only ask this Court to declare that it is a violation of due process for a Federal agency, in a Federal proceeding, to require a witness appearing before it to give answers that will, with demonstrable certainty, force him to incriminate himself in a pending State criminal proceeding.

Sixth. It cannot fairly be said of that proposition, as might perhaps have properly been said in *Knapp v. Schweitzer*, 357 U. S. 371, 375, that "To recognize such a claim would disregard the historic distribution of power between Nation and States in our federal system." For in the present case we have a guideline laid down by the Great Chief Justice himself, who, in a situation where defendants in a Federal court pleaded danger of State penalties, flatly and peremptorily and quite simply said,

"The rule clearly is, that a party is not bound to make any discovery which would expose him to penalties, and this case falls within it."

We submit that this Court should return to the sturdy Federalism of Chief Justice Marshall.

Seventh. It is proper to point out that the Committee recognized the propriety of the *Saline Bank* ruling in substance, inasmuch as the Chairman repeatedly ruled that no inquiry would be made regarding the matters specifically alleged in the pending State indictment. "The subject matter of the indictment will not be gone into, if he feels that it might jeopardize his defense" (R. 77). "That rule or policy will be observed" (R. 78). And see, *accord*, R. 78-79, 81-82, 84-85, 86, 92, 94, 97, 122, 125, 126, 128, 130,

* See *Cohen v. Hurley*, 366 U. S. 117, 129:

"This is not to say, of course, that States have free rein either in the choice of means of forcing incriminatory testimony, or in the drawing of inferences from a refusal to testify on grounds of possible self-incrimination, no matter how objectionable or irrational."

132-134; most of the foregoing references are to statements by the Chairman, but some are to similar statements made by the Committee's counsel and by Senator Ervin.

The difference, then, between petitioner and the Committee came to this, that while the Committee recognized that it was not proper to ask about the pending State indictment or to hamper petitioner in his defense thereto, the Committee was either unable or unwilling to recognize the bearing of the unanswered questions on his impending Indiana trial.

(c) Upholding petitioner's contention will not hamper legitimate legislative inquiries

If the Court adopts the view we urge, that to permit a Federal agency to force an indicted witness to incriminate himself under State law constitutes a violation of Due Process of Law, it might be argued that it is then open to State authorities to hamper legitimate Congressional inquiries by indicting witnesses in respect of the matters about which the committees of Congress may be seeking information.

That danger is probably chimerical, but in any event it is one easily overcome. By reenacting the substance of old 18 U. S. C. § 3486, as it stood when considered in *Adams v. Maryland*, 347 U.S. 179, the witness will have immunity in any criminal proceeding against him in any court—i.e., including State courts—and the Committee will be free to require answers. For, very plainly, had such a statute been in force when this petitioner was on the stand, there would have been no substance in his objection: had the use of his answers in the pending Indiana prosecution been prohibited, they would not and could not have been said to “aid the prosecution of the case in which I am under indictment.”

See also 18 U. S. C. § 1406, as just construed in *Reiss v. United States*, 364 U. S. 507, 511: “Congress may legislate

immunity restricting the exercise of state power to the extent necessary and proper for the more effective exercise of a granted power, and distinctions based upon the particular granted power concerned have no support in the Constitution."

(8) In any event, the demonstrable fact that the Senate Committee have sought to assist, encourage, and indeed exhort State law enforcement officials renders improper the questions it asked petitioner.

The record in this case shows that the Committee questioning the petitioner was not simply inquiring into matters of Federal cognizance that incidentally revealed the commission of State offenses. To the contrary, the Committee actively sought to assist and encourage—indeed, to instigate—State prosecutions in respect of the matters it uncovered.

Thus, at the close of petitioner's testimony, the Chairman of the Committee made the following public statement in the presence of the press (R. 153-154):

"The testimony further indicates that certain high officials of both the Teamsters and the Carpenters Unions, two of the largest unions in the country, with the help and assistance of Mr. Raddock were involved in a conspiracy to subvert justice in the State of Indiana.

"All the facts regarding this conspiracy undoubtedly have not been developed by the committee.

"Further exposure we believe can and should be made. We will be glad to assist and help law enforcement officials in the State of Indiana if they determine that they would interest themselves in the matter."

Thereafter, appearing as a prosecution witness at petitioner's trial for contempt of Congress, the Committee Chairman testified (R. 165):

"Q. As Chairman of this Committee, did you have any intention when you said, what I have read several

times and I am sure both sides know what it is and it is in the record, did you have any intention of encouraging or assisting the State of Indiana in conducting a further investigation of this matter looking towards a state prosecution?

"The Witness: This was the conclusion of the hearings in this particular investigation. At the conclusion, I made this brief statement that is in the record.

"Our legislative function had been performed in seeking information regarding crimes and improper activities. Some evidence had been presented indicating the possibility of a further crime involving this defendant possibly and officers of another large union. It has been our practice to cooperate with state and federal officials where any evidence is developed before us with respect to a crime having been committed. Our legislative purpose is to search out and find if crime has been committed.

"My statement here is to the effect that if the state officials desired to pursue any testimony that we had developed, we would cooperate with them and make the record available to them."

In view of this uncontradicted evidence, different principles come into play, namely, the analogy of the varying search-and-seizure combinations involving cooperative State and Federal activity up to the time that *Mapp v. Ohio*, 367 U. S. 643, finally excluded all illegally seized evidence from use in any prosecution, State or Federal.

Before the *Mapp* decision, evidence illegally acquired by State officers without Federal participation was inadmissible in a Federal prosecution (*Elkins v. United States*, 364 U. S. 206), while evidence illegally acquired by Federal officers without State participation was, at least by orders in *personam*, made unavailable in a subsequent State prosecution (*Rea v. United States*, 350 U. S. 214).

Where there was Federal participation in an illegal State search, the evidence was excluded from use in Federal

courts (*Byars v. United States*, 273 U. S. 28; *Lustig v. United States*, 338 U. S. 74); and the same was true where State agents made an illegal search in the process of helping to enforce Federal law (*Gambino v. United States*, 275 U. S. 310).

That same principle has been held applicable in the area of immunity and self-incrimination. In *Feldman v. United States*, 322 U. S. 487, this Court by 4-3 held that testimony compelled by a State court under a State immunity statute could be used in a Federal prosecution. But this Court said (322 U. S. at 494),

"If a federal agency were to use a state court as an instrument for compelling disclosures for federal purposes, the doctrine of the *Byars* case [273 U. S. 28], *supra*, as well as that of *McNabb v. United States*, 318 U. S. 332, afford adequate resources against such an evasive disregard of the privilege against self-incrimination."

Similarly, this Court in *Knapp v. Schweitzer*, 357 U. S. 371, 380, said:

"Of course the Federal Government may not take advantage of this recognition of the States' autonomy in order to evade the Bill of Rights. If a federal officer should be a party to the compulsion of testimony by state agencies, the protection of the Fifth Amendment would come into play. Such testimony is barred in a federal prosecution, see *Byars v. United States*, 273 U. S. 28. Whether, in a case of such collaboration between state and federal officers, the defendant could successfully assert his privilege in the state proceeding, we need not now decide, for the record before us is barren of evidence that the State was used as an instrument of federal prosecution or investigation."

Here the record shows precisely the converse situation: if petitioner had answered the questions, then State courts could have been using the Federal committee as an instrument for compelling disclosure for State purposes. In-

deed, this would be an *a fortiori* case, because here all this was being done with the encouragement of the Federal committee. For, as the Chairman said (R. 153), "Further exposure can and should be made."

We say, therefore, that the resultant interplay between Federal and State authorities at petitioner's expense that is disclosed here plainly denied him due process of law.

If we are right on our due process point, then, plainly, it is immaterial that the questions asked petitioner were "pertinent to the investigation that the committee was authorized to conduct" (Br. Op. 8), for the reason that "the Congress, in common with all branches of the Government, must exercise its powers subject to the limitations placed by the Constitution on governmental action, more particularly in the context of this case the relevant limitations of the Bill of Rights." *Barenblatt v. United States*, 360 U. S. 109, 112.

II. BY REQUIRING ANSWERS FOR THE EXPRESSED PURPOSE OF "FURTHER EXPOSURE" AND "TO SEARCH OUT AND FIND IF CRIME HAS BEEN COMMITTED", PURSUANT TO A RESOLUTION THAT DIRECTED IT TO INVESTIGATE "THE EXTENT TO WHICH CRIMINAL . . . PRACTICES OR ACTIVITIES ARE, OR HAVE BEEN, ENGAGED IN", THE COMMITTEE ASSUMED POWERS GRANTED ONLY TO THE EXECUTIVE AND THE JUDICIARY, AND HENCE ACTED WITHOUT LAWFUL POWER OR JURISDICTION

A. THE COMMITTEE FRANKLY AND OPENLY DECLARED THAT ITS PURPOSE WAS EXPOSURE

The present record clearly demonstrates that the Committee, whose authority is now being called into question, so formulated its initial public announcement of "the subject matter being inquired into" (R. 21) as to include therein the matters alleged in the Indiana indictment against this petitioner. Comparison of the allegations of that instrument (R. 182-189), which are summarized at pages 6-7,

above, with the announcement made by the Committee's counsel (R. 21-23), quoted verbatim at pages 8-9, above, demonstrates the identity of subject matter.

At the close of petitioner's testimony, the Committee Chairman publicly accused him of committing a crime, saying (R. 153-154):

"The testimony further indicates that certain high officials of both the Teamsters and the Carpenters Union, two of the largest unions in the country, with the help and assistance of Mr. Raddock were involved in a conspiracy to subvert justice in the State of Indiana.

"All the facts regarding this conspiracy undoubtedly have not been developed by the committee.

"Further exposure we believe can and should be made. We will be glad to assist and help law enforcement officials in the State of Indiana if they determine that they would interest themselves in the matter."

Testifying as a witness at petitioner's trial for contempt of Congress, the Committee Chairman said (R. 165):

"Our legislative function had been performed in seeking information regarding crimes and improper activities. Some evidence had been presented indicating the possibility of a further crime involving this defendant possibly and officers of another large union. It has been our practice to cooperate with state and federal officials where any evidence is developed before us with respect to a crime having been committed. Our legislative purpose is to search out and find if crime has been committed.

"My statement here is to the effect that if the state officials desired to pursue any testimony that we had developed, we would cooperate with them and make the record available to them."

And, later, the Committee found as a fact that petitioner used Raddock "as a fixer" to head off any indictment if

Lake County. See Government Exhibit 6 (Sen. Rep. No. 621, Part 2, 86th Cong., 1st sess.), at p. 592, quoted above, page 26.

Otherwise stated, the Committee here acted as a grand jury returning both an accusation in writing and an exhortation to the law enforcement agencies of Indiana to undertake further exposure on their own.

Moreover, unlike the situation considered in *Wilkinson v. United States*, 365 U. S. 399, where the Court divided on whether the primary purpose of the committee there involved was exposure; unlike *Watkins v. United States*, 354 U. S. 178, 200, where the Court refused to find a purpose merely to expose where no such purpose appeared in the resolution directing the investigation; here the resolutions authorizing the present Committee to proceed directed it in terms to undertake the functions of a grand jury. Those resolutions authorized and directed this Committee "to conduct an investigation and study of the extent to which criminal * * * practices or activities are, or have been, engaged in * * *" (R. 176, 179).

Of course the fact that an investigation might possibly disclose crime does not vitiate the essentials of an inquiry undertaken for a proper legislative purpose. *McGrain v. Daugherty*, 273 U. S. 135, 179-180, quoted above, p. 45. But here one of the principal purposes set forth in the resolution that directed the investigation sought to detect crime. Moreover, as the Court noted in *Watkins v. United States*, 354 U. S. 178, 195,

"Prior cases, like *Kilbourn*, *McGrain* and *Sinclair*, had defined the scope of investigative power in terms of the inherent limitations of the sources of that power. In the more recent cases, the emphasis shifted to problems of accommodating the interest of the Government with the rights and privileges of individuals. The central theme was the application of the Bill of Rights as a restraint upon the assertion of governmental power in this form."

And, so far as the present petitioner was concerned, the thrust of the Committee's questions was such that, by exposing petitioner and by requiring him to answer the questions that are now in issue, he was well-nigh certain to be subjected to punishment in the prosecution already commenced against him. See Point IA, pp. 35-41, *supra*.

B. THE COMMITTEE'S SECOND INTERIM REPORT DEMONSTRATES THAT IT DID NOT NEED PETITIONER'S ANSWERS FOR ANY FACT-FINDING PURPOSE

The argument that the Committee had a right to interrogate petitioner at length because of the inherent Congressional power to find facts even unrelated to specific legislation⁶ cannot fairly be made upon this record. For here the Committee found as a fact everything that it sought to obtain from the questions it put to this petitioner, and which he did not answer.

The Committee found as follows (Gov. Ex. 6, R. 161-162, 171; Sen. Rep. No. 621, Part 2, 86th Cong., 1st sess., p. 592):

"From the evidence, the committee also finds that Maxwell C. Raddock was used by Hutcheson as a fixer in an attempt to head-off the indictment of Hutcheson, the Carpenter's vice president, O. William Blaier, and the treasurer, Frank Chapman."

And that finding was preceded by a detailed summary of a mass of evidence documenting the conclusion (*id.*, at pp. 554-560).

⁶"A problem opens before Congress and a committee is instructed to investigate and see what can be done. . . . It may, as did Senate committees in 1885 and 1896, make no answer but simply set forth the facts for the judgment of the legislature. No such investigation is fruitless; no such investigation is made in pursuance of other than legislative functions." Landis, *Constitutional Limitations on the Congressional Power of Investigation*, 40 Harv. L. Rev. 153, 217-218.

Indeed, the Committee Counsel's background statement (R. 21-23), quoted above in part E of the Statement (*supra*, pages 8-9), shows that the Committee had already completed its fact-finding before this phase of its hearings commenced. All that the Committee lacked were admissions, out of the several witnesses' own mouths, that the allegations against them were true. This is not fact-finding, this is exposure only for exposure's sake.

It is therefore plain that petitioner was cited for contempt, not because he thwarted the Committee's fact-finding activities, nor even because he did not answer on grounds of self-incrimination—Blair also refused to answer virtually identical questions without invoking that privilege, which, in the Chairman's view (*supra*, pp. 10-13) was tantamount to a confession of guilt—but was so cited simply for purposes of exposure and punishment.

C. HERE THE COMMITTEE UNDERTOOK EXECUTIVE AND JUDICIAL FUNCTIONS UNRELATED TO ANY LEGITIMATE LEGISLATIVE PURPOSE

Broad though the Congressional power of investigation undoubtedly is, it is still subject to limitations. As this Court said only two years ago in *Barenblatt v. United States*, 360 U. S. 109, 111-112:

"The scope of the power of inquiry, in short, is as penetrating and far-reaching as the potential power to enact and appropriate under the Constitution.

"Broad as it is, the power is not, however, without limitations. Since Congress may only investigate into those areas in which it may potentially legislate or appropriate, it cannot inquire into matters which are within the exclusive province of one of the other branches of the Government. Lacking the judicial power given to the Judiciary, it cannot inquire into matters that are exclusively the concern of the Judiciary. Neither can it supplant the Executive in what exclusively belongs to the Executive. And the Congress, in common with all branches of the Government,

must exercise its powers subject to the limitations placed by the Constitution on governmental action, were particularly in the context of this case the relevant limitations of the Bill of Rights."

The foregoing passage simply restated what had earlier been said in *Watkins v. United States*, 354 U. S. 178, 187:

"Nor is the Congress a law enforcement or trial agency. These are functions of the executive and judicial departments of government. No inquiry is an end in itself; it must be related to, and in furtherance of, a legitimate task of the Congress. Investigations conducted solely for the personal aggrandizement of the investigators or to 'punish' those investigated are indefensible."

The same thought runs through earlier cases. Thus, in *Quinn v. United States*, 349 U. S. 155, 161, the Court said:

"Similarly, the power to investigate must not be confused with any of the powers of law enforcement; those powers are assigned under our Constitution to the Executive and the Judiciary."

Somewhat earlier, in *Tenney v. Brandhove*, 341 U. S. 36, 378, the Court noted that "To find that a committee's investigation has exceeded the bounds of legislative power it must be obvious that there was a usurpation of functions exclusively vested in the Judiciary or the Executive."

Here, we submit, the Committee did exceed the bounds of legislative power. Its charter (R. 178, 179) directed it to ascertain whether "criminal . . . practices or activities are, or have been, engaged in"; its Chairman said during Raddock's testimony (R. 24), "I was hopeful that you could cooperate with us and help us get leads here and evidence that would help to expose those who may have engaged in criminal acts"; the Chairman at the close of petitioner's testimony said (R. 153-154) "Further exposure we believe can and should be made. We will be

glad to assist and help law enforcement officials in the State of Indiana if they determine that they would interest themselves in the matter"; and on the stand the Chairman frankly stated (R. 165) that "Our legislative purpose is to search out and find if crime has been committed."

Those are the functions, not of legislatures, but of law enforcement officers, of prosecutors, and of grand juries. For, as this Court once said (*Jones v. Securities & Exch. Comm.*, 298 U. S. 1, 27), "the grand jury abides as the appropriate constitutional medium for the preliminary investigation of crime and the presentment of the accused for trial."

Similarly, the Ninth Circuit has remarked (*Hubner v. Tucker*, 245 F. 2d 35, 39, note 6) that "The grand jury is an instrumentality of a court, which has general jurisdiction over crimes supposed or alleged to have been committed. An executive agency has no such power." Nor, we submit, does the Congress or any of its committees have any such power.

It follows that, in asking petitioner the questions now in issue, the Committee was acting outside its legislative role. Accordingly, petitioner could rightfully refuse to answer. *McGrain v. Dargherty*, 273 U. S. 135, 176.

III. A WITNESS BEFORE A LEGISLATIVE COMMITTEE IS NOT RESTRICTED TO INVOKING THE FIFTH AMENDMENT'S GUARANTEE AGAINST SELF-INCRIMINATION AS THE SOLE GROUND FOR REFUSING TO ANSWER QUESTIONS PUT TO HIM

In announcing the judgment of conviction, the District Judge said (R. 174) that "the relief that this defendant ought to have gotten before the Committee of Congress was his claim under the immunity clause of the Fifth Amendment. He did not seek it and it is the only way he could properly seek it, before a Committee of Congress."

The District Judge relied (R. 174) on "the *Sacher* case"—whether on *Sacher v. United States*, 240 F. 2d 46

(D. C. Cir.), judgment vacated, 354 U. S. 930, or on *Sacher v. United States*, 252 F. 2d 828 (D. C. Cir.), reversed, 356 U. S. 576, is not clear—noting (R. 174) that “Mr. Hitz [Assistant United States Attorney prosecuting petitioner] doesn’t seem to think it is in point with the facts of this case.”

We agree with Mr. Hitz that neither *Sacher* decision supports the ruling announced by the District Judge, and we assert further that a long line of cases here demonstrates the incorrectness of that ruling.

A. A WITNESS BEFORE A LEGISLATIVE COMMITTEE, LIKE A WITNESS BEFORE A COURT, MAY INVOKE ANY PRIVILEGE RECOGNIZED BY LAW AS A GROUND FOR REFUSING TO ANSWER QUESTIONS PUT TO HIM

Only last May, this Court said (*Slagle v. Ohio*, 366 U. S. 259, 265):

“Surely traditional notions of fair play contemplate that a person summoned to testify before any adjudicatory or investigatory body, including a legislative investigatory committee, may object to any question put to him upon any available ground however tenuous.”

This pronouncement involved no new departure. Just two years earlier, in *Baronblatt v. United States*, 360 U. S. 109, 112, the Court said that “Congress, in common with all branches of the Government, must exercise its powers subject to the limitations placed by the Constitution on governmental action, more particularly in the context of this case the relevant limitations of the Bill of Rights.”

That being so, the District Judge here was plainly in error in holding that, for purposes of a prosecution for contempt of Congress, the Bill of Rights was limited to a single clause of the Fifth Amendment. Moreover, if there was indeed any such limitation, then there would have been no occasion in *Baronblatt* for the Court to devote ten pages

of its opinion (360 U. S. at 125-134) to a consideration of the merits of the First Amendment claim that was there put forward; a simple notation of unavailability would have sufficed.

The *Barenblatt* holding, that all of the Bill of Rights was available to a witness before a Congressional Committee, likewise was not novel; it had been anticipated at least twice.

In *Watkins v. United States*, 354 U.S. 178, 188, the Court had said:

"This, of course, assumes that the constitutional rights of witnesses will be respected by the Congress as they are in a court of justice. The Bill of Rights is applicable to investigations as to all forms of governmental action. Witnesses cannot be compelled to give evidence against themselves. They cannot be subjected to unreasonable search and seizure. Nor can the First Amendment freedoms of speech, press, religion, or political belief and association be abridged."

Further, at p. 197, the Court had ruled that "The First Amendment may be invoked against infringement of the protected freedoms by law or by lawmaking." And in *Quinn v. United States*, 349 U. S. 155, 161, the Court had noted that "Still further limitations on the power to investigate are found in the specific individual guarantees of the Bill of Rights, such as the Fifth Amendment's privilege against self-incrimination which is in issue here." We have added the italics to show the non-restrictive character of the example.

Indeed, we think it clear that any privilege recognized by law may be invoked by a witness before a legislative committee. This proposition was early recognized; see *Landis, Constitutional Limitations on the Congressional Power of Investigation*, 40 Harv. L. Rev. 153, 219:

"Established privileges of immunity, of course, exist before such committees as well as before courts of law."

The attorney-client privilege, for example, was recognized as valid on this very record (R. 58, 59, 60, 62, 63, 65, 66, 69, 70, 71, 72, 73). We have no doubt that the witness who there refused to answer on grounds of the attorney-client privilege could not have been successfully prosecuted for contempt of Congress, and that the same conclusion would follow in the case of one who invoked the privilege that protects communications between husband and wife.

But it is not necessary to pursue the outermost reaches of the privileges on which the witness before a legislative committee may rely. Suffice it to say that the guarantees of the Bill of Rights have always been held available, and that petitioner here invoked one part of the Bill of Rights, viz., the Due Process clause of the Fifth Amendment. If, as we have argued above, he is correct as to the substance of that clause, he does not fail because he chose not to avail himself of another clause of the same Amendment, or, for that matter, of other and independent grounds for refusing to answer.

B. WHERE, AS HERE, THE QUESTIONS INVOLVE A DEPRIVATION OF DUE PROCESS OF LAW, A WITNESS BEFORE A CONGRESSIONAL COMMITTEE IS NOT REQUIRED TO PLACE HIS REFUSAL TO ANSWER ON ONLY THE GROUND THAT WOULD AID THE PROSECUTION IN A PENDING CRIMINAL CASE, AND THAT, ADDITIONALLY, AS IN THE EXPRESSED VIEW OF THE COMMITTEE CHAIRMAN HERE, WAS TANGENT TO AN ADMISSION OF GUILT

What the District Judge necessarily held here—with the apparent concurrence of the Court of Appeals—was that the merits of petitioner's due process contentions could not be considered, because (R. 174) "the relief that this defendant ought to have gotten before the Committee of Congress was his claim under the immunity clause of the Fifth Amendment."

Let us examine the consequences if petitioner had in fact invoked a privilege against self-incrimination.

First. He would have hurt himself at his Indiana trial had he taken the stand (*supra*, pp. 35-41), as indeed the Government conceded in the Court of Appeals (U. S. Br. 26, note 8); and if it be objected that he might not have testified there in any event, the short answer is that to have claimed the privilege before the Committee would materially have circumscribed his course of action at the trial.

Second. It is not necessary to speculate whether, if petitioner had in fact invoked the privilege against self-incrimination, the Committee would have allowed the claim, as in fact it allowed other witnesses to do (*supra*, pp. 7-8, 10, 13-14), nor to argue whether under existing law (e.g., *United States v. Murdock*, 294 U. S. 141) the Committee would have been justified in disallowing such a claim on his part. For the record shows that,

Third, the Chairman in repeated announcements made it plain that in his view a claim of the privilege against self-incrimination was tantamount to an admission of guilt. See part F of the Statement, *supra*, pp. 10-13. The same view runs through those portions of the Committee's Second Interim Report that were introduced in evidence at the trial (Sen. Rep. No. 621, Part 2, 86th Cong., 1st sess. [Govt. Ex. 6, R. 161-162, 170], pp. 554-556, 592).

We are constrained to note that the Chairman's views, set forth in June 1958, are in sharp contrast with what this Court has said regarding the effect that can properly be given to an invocation of the privilege against self-incrimination.

In *Emspak v. United States*, 349 U. S. 190, 195, decided in May 1955, the Court said:

"* * * if it is true that in these times a stigma may somehow result from a witness' reliance on the Self-Incrimination Clause, a committee should be all the more ready to recognize a veiled claim of the privilege. Otherwise, the great right which the Clause

was intended to secure might be effectively frustrated by private pressures."

Similarly, in *Ullmann v. United States*, 350 U. S. 422, decided in March 1956, the Court said at pp. 426-427:

"It is relevant to define explicitly the spirit in which the Fifth Amendment's privilege against self-incrimination should be approached. This command of the Fifth Amendment ('nor shall any person . . . be compelled in any criminal case to be a witness against himself . . .') registers an important advance in the development of our liberty—one of the great landmarks in man's struggle to make himself civilized. Time has not shown that protection from the evils against which this safeguard was directed is needless or unwarranted. This constitutional protection must not be interpreted in a hostile or niggardly spirit. Too many, even those who should be better advised, view this privilege as a shelter for wrongdoers. They too readily assume that those who invoke it are either guilty of crime or commit perjury in claiming the privilege. Such a view does scant honor to the patriots who sponsored the Bill of Rights as a condition to acceptance of the Constitution by the ratifying States. The Founders of the Nation were not naive or disregarding of the interests of justice."

And, a month later, in April 1956, the Court decided *Slochower v. Board of Education*, 350 U. S. 551, saying at pp. 557-558:

"At the outset we must condemn the practice of imputing a sinister meaning to the exercise of a person's constitutional right under the Fifth Amendment. The right of an accused person to refuse to testify, which had been in England merely a rule of evidence, was so important to our forefathers that they raised it to the dignity of a constitutional enactment, and it has been recognized as 'one of the most valuable prerogatives of the citizen.' *Brown v. Walker*, 161 U. S.

* Footnotes omitted.

591, 610. We have reaffirmed our faith in this principle recently in *Quinn v. United States*, 349 U. S. 155. In *Ullmann v. United States*, 350 U. S. 422, decided last month, we scored the assumption that those who claim this privilege are either criminals or perjurers. The privilege against self-incrimination would be reduced to a hollow mockery if its exercise could be taken as equivalent either to a confession of guilt or a conclusive presumption of perjury. As we pointed out in *Ullmann*, a witness may have a reasonable fear of prosecution and yet be innocent of any wrongdoing. The privilege serves to protect the innocent who otherwise might be ensnared by ambiguous circumstances. See Griswold, *The Fifth Amendment Today* (1955)."

But in June 1958, the Committee Chairman still insisted that a witness who claimed this privilege admitted guilt, even in the face of a reference to the holdings just set out by counsel for the witness. The record is revealing on that point (R. 32-33):

"Mr. Raddock. Senator, on the advice of counsel, I must respectfully decline to answer on the ground that to do so might tend to make me a witness against myself.

"The Chairman. I am compelled, and I think everyone who listens or who may read this transcript is compelled, to the conclusion that you are being truthful at least about taking the fifth amendment, and that if you did tell the truth, it might tend to incriminate you, and also those of the union who are responsible for and who authorize the services you performed.

"I will have to let the record stand that way, unless you wish to correct it by sworn testimony.

"Mr. Waldman [Counsel for Raddock, see R. 17]. Well, I assume the record needn't show that the courts have held that the plea of the privilege did not indicate an admission on the part of the witness—

"The Chairman. The attorney can take judicial notice of that as I do. I said he had a right to take it

under the Constitution, and the committee needs no lecture at this late hour in its work with respect to what the fifth amendment is and the privilege of taking it."

Fourth. We are of course aware that petitioner admitted he was concerned about possible violation of the AFL-CIO code of ethics "concerning union officers who invoke the fifth amendment when asked about their official conduct" (R. 147), but whatever the significance of that admission, it cannot detract from the bearing of the other matters just set forth.

C. PETITIONER'S RELIANCE ON THE DUE PROCESS CLAUSE IS NOT AN AFTERTHOUGHT

As we have repeatedly pointed out, petitioner's refusal to answer was based on the assertion that each question (R. 121-122, 123, 124-125) "relates or might be claimed to relate to or aid the prosecution of the case in which I am under indictment and thus be in denial of due process of law."

That being so, we are at a loss to understand the Government's assertion (Br. Op. 10-11) that

"petitioner never informed the committee that he desired to invoke the privilege but was afraid that it would be used against him on a later trial. On the contrary, he unequivocally disclaimed reliance upon it. His present claim is thus a mere afterthought. It is an attempt to obtain the benefits of the privilege without asserting it."

We submit that the words, "relates or might be claimed to relate to or aid the prosecution of the case in which I am under indictment", are amply broad to cover every objection to the questions that we have argued above in Point IA, pp. 35-41. Significantly enough, the Government in the Court of Appeals made no such contention as is quoted immediately above—no doubt because there it recognized that

"a claim of the privilege does not require any special combination of words" (*Quinn v. United States*, 349 U. S. 156, 162), and that "no ritualistic formula or talismanic phrase is essential" (*Emspak v. United States*, 349 U. S. 190, 194).

Here the Committee and its counsel repeatedly insisted, during Blaier's questioning as well as during petitioner's, that nothing asked either of them concerning the Lake County transaction could possibly bear upon the subject matter of the Marion County indictment that was pending against them (R. 81-82, 84-85, 86, 97, 132, 132-133, 134), brushing aside petitioner's contentions and those of his counsel (and Blaier's) to the contrary (R. 78, 81, 82, 84, 85, 86, 93-94, 123, 132, 133, 134). In the face of this Court's holding in *Emspak v. United States*, 349 U. S. 190, 195, that "a committee is not obliged to either accept or reject an ambiguous constitutional claim the very moment it is first presented", and that (*ibid.*) "The way is always open for the committee to inquire into the nature of the claim before making a ruling," the Committee here did not inquire further, but simply asserted, flatly and repeatedly, that the two transactions were unrelated.

That being so, petitioner is thereafter entirely free to spell out in detail the relationship of the questions asked to the indictment that had already been returned. Having done so, having demonstrated the bearing that the questions would have had upon the pending indictment, we submit it is not now open to the Government to characterize as "a mere afterthought" his present particularization of an objection that was originally summarized with comprehensive clarity.

CONCLUSION

For the foregoing reasons, the judgment below should be reversed, with directions to dismiss the indictment.

Respectfully submitted.

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Of Counsel.

AUGUST 1961.

APPENDIX

Details of United States v. Saline Bank, 1 Pet. 100

1. This case was No. 58 of the January 1828 Term; its consecutive file number is No. 1399. It was filed on February 24, 1826, and thereafter continued from Term to Term. On Friday, March 7, 1828, it "was submitted to the Consideration of the Court on the Transcript of the Record and the Statements of the respective counsel" (Minute Book for that date; Docket Book D, p. 1500), and on Monday, March 10, 1828, the judgment of the court below (United States District Court for the Western District of Virginia, at Clarksburg [now West Virginia]) was affirmed.

2. The bill of complaint was brought by the United States against 38 named defendants, and was filed in the United States District Court for the Western District of Virginia at Clarksburg on November 15, 1824. It appears as follows in the record:

To the Honourable John P. Jackson Judge of the United States Court for the Western District of Virginia, holden at Clarksburg—

Edwin S. Duncan, Attorney for the United States for the said District, sheweth on behalf of the United States of America that about the year []¹ a company was formed of Individuals citizens of Virginia, & within the District aforesaid, for the purpose of transacting and carrying on the ordinary trade or business of Banking, that the said company in pursuance of "Articles of association" adopted by them for the purpose, established a Banking house in the town of Clarksburg, & within the District aforesaid, and assumed the name and stile of the "President, Directors & Company of the Saline Bank of Virginia"—that the said Company proceeded to issue Notes or Bills, purporting to be for sums payable out of the Joint Funds of the said Company; and to make discounts, and exchanges, by means whereof circulation and currency was given to their [*2] said Bills & Notes to a large amount—that of the Notes or Bills of said Company so put into circulation there was received and paid into the Treasury of the United States in discharge of public dues the sum of \$10,120, or upwards—

¹ Blank space in the original.

that on the 21st day of October 1819, William Whann Cashier of the Bank of Columbia acting as agent for the Treasury of the United States, deposited with John Webster, the Cashier of the said company the sum of 5831 dollars in said Bills and Notes and obtained a certificate of such deposit from the said John Webster—that the said William Whann on the same day demanded payment of the amount of the said deposit: which was refused by the said John Webster, who alledged as a ground of said refusal, that he was not then prepared with funds, that the said William Whann, at the same time presented a draft drawn by the Treasurer of the United States on the said John Webster, as Cashier of said Virginia Saline Bank for \$4290 being also for Notes & Bills of the said Company, received into the Treasury as aforesaid (being parcel of the sum of \$10120) which draft was not paid by the said Webster, who stated the same cause for his failure to make payment that he did for his refusal to pay the amount of said deposit—and it is here further shewn that no part of the said deposit or of the said draft has been paid—Your Orator on behalf of the said United States, further begs leave to shew, that the said John Webster, who he prays may be made defendant to this bill of complaint and who combining and confederating with other individuals, members of the said Company, as the Cashier of the said Bank, became possessed of funds to a large amount consisting of specie, and the Notes of chartered & solvent Banks, that he was in the possession of [*3] said funds, at the time when the said Company entered into the fraudulent determination not to redeem its notes—a determination made some time previous to the making of said deposit & the presentation of said draft—that the said funds have been retained by the said John Webster and his confederates. It is also further shewn that the said John Webster is in the possession of the Books, papers and other effects of said company, that he not only refuses to make payment of the amount of the said deposit and draft, but refuses to disclose the situation of the affairs of said Company, or of the names of the individuals who compose said Company—that the members composing said Company, it is ascertained were numerous, and that since the organization thereof, some have departed this life—That the names of some of the said members or stockholders of said company have been discovered, to wit. Jacob Stealy, [plus 36 other names]—who it is also prayed

may be [*4] made defendants to this Bill—that the said last mentioned defendants, conspiring and confederating with the said John Webster, to defraud the United States out of the aforesaid sums of money also refuse to make payment of the amount of the said deposit & draft, and also refuse to disclose the situation of the affairs of said Company, or the amount of its funds or the names of its members, and also deny that they are bound to pay the aforesaid sums, claimed by the United States, alledging at times, that owing to the said Bank not having been incorporated by law, that its proceedings were illegal and its contracts not binding, and that the holders of its paper cannot either resort to the joint funds of the Company, or to the members individually for payment, all which actings and doings of the said defendants are contrary to equity & good conscience and tends to defraud the said United States. To the end therefore, inasmuch as proper relief cannot be obtained in the premises except by the interposition of a Court of equity—It is prayed that the said defendants be compelled to answer the allegations of this bill upon their respective oaths as specially as if thereto particularly interrogated, that they be compelled to state the names of the individuals that compose said company not heretofore named, who it is prayed when their names are discovered may be made defendants to this bill and be compelled to answer the same, that said defendants be compelled to state whether the said John Webster was not the authorized agent or manager of said Company at the period when the said deposit was made & draft was presented—that the said John Webster be [*5] compelled to disclose the situation and amount of the funds of said Company the amount of debts owing to it and the names of the debtors and particularly to state whether, at the time of the refusal of the said Company to redeem its Notes, there was not a large sum in specie & Bank Notes on hand and what has become of it—whether he did not receive in deposit the said sum of 5831 dollars for the Treasury, at the time mentioned and give his certificate of Deposit therefor, whether the exhibit marked A is not a copy of said certificate, and whether the exhibit marked B is not a copy of another certificate given by him of the reasons of his failure to pay the amount of said draft and deposit—that the said John Webster state whether he hath in his possession the original articles of association of said Company & if so, to produce it or a

copy thereof—and that the matter being fully heard, that the said defendants be decreed to pay to the said United States of America the said sum of 10120 dollars with interest from the said 21st day of October 1819, and that the said United States have such other, further and general relief as shall appear just—It is also prayed that a writ of Sp.^a issue &c

E. S. Duncan, D. Atto.

4. Exhibit A to the bill of complaint (MS. p. 5) is like item 1 on p. 101 of 1 Pet., except that the date in the original is "1819" and not "1812". Exhibit B (MS. p. 6) is like item 2, 1 Pet. at 101, while the draft at MS. p. 6 is identical with the draft at 1 Pet. 101.

5. The MS. record then extends in full (pp. 7-44) many subpoenas with marshal's returns thereon, attachments, and recognizances; the whole interspersed with minute entries relating thereto.

6. The defendants' plea (MS. pp. 44-46) is set out in full at 1 Pet. 101-102.

7. The District Court's ruling is as follows (MS. p. 47):

"And this cause by consent of parties coming on to be argued upon the sufficiency of the plea of the defendants to bar the plaintiffs of their right to obtain the relief prayed for in their said bill and arguments of counsel being heard, the Court is of opinion that the said plea and the matters therein contained in manner and form as the same are pleaded and set forth are sufficient to bar the said plaintiffs from the relief prayed for by them in their said bill of complaint against the said defendants. The Court doth therefore order adjudge and decree that the said bill be dismissed, from which said decree the plaintiffs pray an Appeal to the first day of the next term of the Supreme Court which is granted."

8. The transcript also contains, as exhibits, the Articles of Association of the Saline Bank with the names of the subscribers (MS. pp. 47-61); some documents concerning the non-appearance of non-resident defendants (MS. pp. 61-63); and plaintiff's proposed interrogatories.

9. The interrogatories (MS. pp. 63-64) were as follows:

"Interrogatories propounded by the plaintiff to the defendants, who have not appeared and answered—

"Interrogatory 1. Are you a stockholder or partner in the Banking Company, late established in Clarkeburg, Harrison County, Virginia, called or denominated the Virginia Saline Bank.

"2. How many shares of the stock do you hold.

"3. What was the capital stock of the company.

"4. What proportion was paid in upon each share of the stock.

"5. Were there written articles or rules adopted for the government of said Company, and where are said articles or rules.

"6. Were you a borrower from the said company and if so to what amount.

"7. Have you discharged your loans, or what amount remains in arrear from you to the Company.

"8. Has there being^a any dividends of the original stock among the Company.

"9. Have you sold your stock in said company, if so, to whom and when was said sale made.

"10. Was John Webster the Cashier of said Company, if so when was he appointed, and how long has he acted as such—

"11. Where are the books, papers & funds of said Company—

"12. What amount of the Notes of said Company are unredeemed—

"13. What do you know touching a certificate of deposit given by John Webster to the agent of the plaintiff for []^b of the notes of said Company which certificate is referred^c to in the bill of Complaint.

"14. Did said Company emit or issue Bills payable out of the joint funds of said company, and if so, to what amount.

"15. When did the company cease to make specie payments for its notes."

^a These three letters underscored in original.

^b Blank space in the original.

^c So in original.

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Office Supreme Court, U.S.

FILED

SEP 25 1961

JAMES R. BROWNING, Clerk

No. 46

In the Supreme Court of the United States

OCTOBER TERM, 1961

MAURICE A. HUTCHESON, PETITIONER

v.

UNITED STATES OF AMERICA

**ON WRIT OF HABEAS CORPUS TO THE UNITED STATES COURT OF
APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT**

BRIEF FOR THE UNITED STATES

ARCHIBALD COX,

Solicitor General,

HERBERT J. MILLER, Jr.,

Assistant Attorney General,

PHILIP R. MONAHAN,

Attorney,

Department of Justice,

Washington 25, D.C.

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THE UNIVERSITY OF CHICAGO

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1. 凡在本行开立存款账户的客户，均可向本行申请开立支票。

THE UNIVERSITY OF CHICAGO

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1. The first step is to identify the problem or question that needs to be answered. This involves understanding the context and the specific requirements of the task.

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In the Supreme Court of the United States

OCTOBER TERM, 1961

No. 46

MAURICE A. HUTCHESON, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE UNITED STATES

OPINION BELOW

The court of appeals affirmed petitioner's conviction, *per curiam*, without opinion (R. 191-192). The oral "ruling" or opinion of the district court (R. 174), incident to its finding of guilt, is not reported.

JURISDICTION

The judgment of the court of appeals was entered on December 7, 1960 (R. 191-192). A petition for rehearing was denied on January 9, 1961 (R. 192). The petition for a writ of certiorari was filed on February 7, 1961, and was granted on April 3, 1961 (R. 193; 365 U.S. 806). The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the inquiry by the Senate Select Committee on Improper Activities in the Labor or Management Field into whether union funds had been used to "fix" a grand jury investigation into the personal affairs of petitioner and other officers of the Carpenters Union was within the committee's authority under its authorizing resolution, and whether the resolution was adopted pursuant to a legitimate legislative purpose.

2. Whether the fact that a state indictment, to which the information sought by the committee indirectly related, was pending against the union officers at the time of the inquiry precluded, or constitutionally could have precluded, the committee from pursuing its inquiry.

3. Whether the possibility that a state prosecutor might seek to show that petitioner had claimed the privilege against self-incrimination in the federal proceeding constitutes a basis for holding that the congressional committee was constitutionally required to refrain from asking any questions which might have any relevance to the pending state case.

4. Whether the fact that the testimony sought from petitioner might have tended to show consciousness of guilt of the offenses charged in the pending state indictment—and on this theory have been admissible against him at his trial thereunder—made it improper or otherwise violative of due process for the committee to require him to state what he knew about the subject under inquiry, albeit petitioner would have been excused from giving the testimony had he

chosen to claim the privilege against self-incrimination.

5. Whether a witness before a congressional committee who has deliberately and repeatedly disclaimed reliance upon the privilege against self-incrimination may insist upon its protection under another name.

CONSTITUTIONAL PROVISION, STATUTE, AND RESOLUTION
INVOLVED

The Fifth Amendment to the Constitution of the United States provides in pertinent part:

No person * * * shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law * * *.

2 U.S.C. 192 (R.S. 102, as amended) provides:

Every person who having been summoned as a witness by the authority of either House of Congress to give testimony or to produce papers upon any matter under inquiry before either House, or any joint committee established by a joint or concurrent resolution of the two Houses of Congress, or any committee or either House of Congress, willfully makes default, or who, having appeared, refuses to answer any question pertinent to the question under inquiry, shall be deemed guilty of a misdemeanor, punishable by a fine of not more than \$1,000 nor less than \$100 and imprisonment in a common jail for not less than one month nor more than twelve months.

Senate Resolution 74, 85th Congress, agreed to January 30, 1957 (103 Cong. Rec. 1264-1265; Govt. Ex. 1, R. 176-177), provided in pertinent part:

Resolved, That there is hereby established a select committee which is authorized and directed to conduct an investigation and study of the extent to which criminal or other improper practices or activities are, or have been, engaged in in the field of labor-management relations or in groups or organizations of employees or employers to the detriment of the interests of the public, employers or employees, and to determine whether any changes are required in the laws of the United States in order to protect such interests against the occurrence of such practices or activities.

STATEMENT

Petitioner was charged in an eighteen-count indictment (R. 4-7), filed February 15, 1960 in the United States District Court for the District of Columbia, with having refused, in violation of 2 U.S.C. 192 (*supra*, p. 3), to answer eighteen questions pertinent to the matter under inquiry, put to him by the Senate Select Committee on Improper Activities in the Labor or Management Field. Having waived his right to a trial by jury (R. 1), he was found guilty by the court (Morris, D. J.) on all counts (R. 174) and was sentenced generally to six months' imprisonment and to pay a fine of \$500 (R. 180-190). The court of appeals affirmed the judgment without opinion (R. 191-192).

The pertinent facts may be summarized as follows:

1. The Senate Select Committee on Improper Activities in the Labor or Management Field was

directed by its authorizing resolution (S. Res. 74, 85th Cong., *supra*, pp. 3-4)—

to conduct an investigation and study of the extent to which criminal or other improper practices or activities are, or have been, engaged in in the field of labor-management relations or in groups or organizations of employees or employers to the detriment of the interests of the public, employers or employees, and to determine whether any changes are required in the laws of the United States in order to protect such interests against the occurrence of such practices or activities.

Commencing June 4 and concluding June 27, 1958, the committee conducted a series of public hearings inquiring into the affairs of the United Brotherhood of Carpenters and Joiners of America (the Carpenters Union) and its officers, including petitioner, its general president (R. 10-97, 106-140, 143-154). The committee, in earlier hearings, had heard considerable testimony as to the misuse of union funds by various union officials for their personal benefit, and the purpose of the hearings here involved, as announced by the chairman of the committee (Senator McClellan) at their commencement, was to pursue that inquiry with particular reference to the Carpenters Union (R. 13). The chairman said (R. 13):

The Chair may say that during the existence of this committee we have had much information and a great deal of testimony regarding the misuse of union funds, regarding personal financial gain and benefit and profit and ex-

penditure of such funds by union officials, and we are still pursuing that aspect of labor-management relations.

In this particular instance, there is indication that the union membership have again been imposed upon by transactions that have occurred that we will look into as the evidence unfolds before us.

Petitioner appeared before the committee on the final day of the hearings, June 27, 1958 (EL 88, 90-151). To indicate the context of the questions which petitioner refused to answer, to show their relevance to the inquiry, and to examine the grounds of petitioner's refusals, we refer, at the outset, to an Indiana indictment in Marion County which was pending against petitioner and two other officers of the Carpenters Union at the time of the hearings (R. 91) and also to proceedings which occurred on the day before petitioner's appearance before the committee.

2. On February 18, 1958 (R. 91), some four months prior to the hearings, petitioner and two other Carpenters Union officers—Frank Chapman, the general treasurer, and O. William Blaier, the second general vice president (R. 21, 76)—had been indicted by the State of Indiana in Marion County (Indianapolis), Indiana, for bribing and conspiring to bribe an Indiana state official as part of a scheme to enrich themselves through the sale to the State of rights of way over certain land (R. 182-189). Specifically, Indiana had charged that petitioner, Chapman, and Blaier, on or about May 1, 1956, conspired to offer (count 1)

and offered (count 2) to pay to Harry Doggett, an official of the State Highway Department, one-fifth of all profits to be realized by the defendants from grants to the State of rights of way over real estate owned by them, as bribes to influence Doggett to approve such grants (R. 182-189). The State also alleged that Doggett, in furtherance of the conspiracy, subsequently approved specific conveyances and was paid bribes amounting to \$15,800 (R. 183-189).¹

One aspect of the McClellan committee's inquiry was whether union funds had been used in August 1937 to bribe Metro Holovachka, the county prosecutor for Lake County (Gary), Indiana, in order to induce him to terminate a grand jury investigation which he had been conducting into the activities of petitioner, Chapman, and Blaier—the same activities for which they were later indicted in Marion County (see *supra*). As indicated below, the committee expressly refrained from questioning petitioner concerning the subject matter of the Marion County indictment as such, i.e., the land transactions in which he, Chapman, and Blaier were involved and the alleged bribery of a highway official in connection with those transactions.

3. The matter of the use of union funds to influence Holovachka's conduct of the Lake County investigation was first raised at a public hearing of the committee on June 26, 1956, the day preceding petitioner's

¹ We note, for the Court's information, that petitioner and his two co-defendants were tried and convicted under the Marion County indictment in November 1940. That conviction is currently pending on appeal to the Supreme Court of Indiana.

appearance. Petitioner, though he did not testify on the 26th, was present in the hearing room during the proceedings (R. 10-11).

Maxwell Raddock, the first of several witnesses to testify on the 26th (R. 16), was a New York businessman and publisher who had recently published for the Carpenters Union (pursuant to a contract with its executive board, headed by petitioner) a book entitled *Portrait of an American Labor Leader: William L. Hutcherson*. The book was a biography of petitioner's father, deceased former president of the Union, for the writing and production of which Raddock was paid \$310,000 in Union funds. On the basis of evidence previously heard, the committee had reason to believe—and later reported to the Senate—that Raddock had been "overpaid some \$200,000" for this work.* The committee also had information suggesting that Raddock, using Carpenters Union funds, had played a significant role in causing Holovachka to abandon the Lake County grand jury investigation into the affairs of petitioner, Chapman, and Blaier (for which

*See Second Interim Report of the Select Committee on Improper Activities in the Labor or Management Field, S. Rept. No. 481, 86th Cong., 1st sess., Part 2, October 23, 1959, pp. 591-593 (Govt. Ex. C, R. 152-162, 170-173). The evidence on which this conclusion of the committee was based is summarized at pp. 532-534 of the Report. Among other things, the evidence showed that "though Raddock was paid some \$30,000 for research and writing, heavily plagiarized huge sections of the book from other more knowledgeable authors." Second Interim Report, *supra*, p. 532. Of the remark of Senator Ervin, a committee member, that "The evidence before this committee indicates very strongly that you [petitioner] could have gotten this book written by the foremost historian in the United States for far less money [than \$310,000]" (R. 115).

they were later indicted in Marion County). Records of the Carpenters Union showed, for example, that on August 11, 1957—nine days prior to the announcement by Holovachka that the Lake County investigation was being terminated (R. 22; see *infra*, p. 11)—Raddock, at Carpenters Union expense, flew from New York to Chicago, and that during the following six days (likewise at Union expense) he stayed at the Drake Hotel in that city (R. 139-140). Other records in the committee's possession showed that petitioner and Blaier were also in Chicago during this period and that Blaier stayed at the same hotel as Raddock (R. 84, 146). Raddock's name, moreover, had been directly associated with a reported "fix" of the Lake County investigation in an anonymous telephone call which a reporter for an Indianapolis newspaper, John Hackett, received on August 19, 1957, the day preceding Holovachka's announcement of the cessation of the grand jury inquiry (R. 42-43).⁴

Raddock, when asked by the committee on the 26th if he knew Holovachka, invoked his privilege against

⁴The caller, according to Hackett's affidavit, said (R. 43):

"Thought you people would like to know that Gary Carpenter's [sic] case has been all taken care of by the Teamsters. There will be no indictment today. You can check the telephone room in Chicago and find that Max Raddock [sic] put through a call to Charles Johnson, Jr. [a Carpenters Union vice president], last night. This came right after the Teamsters had a meeting in Gary last Wednesday night."

When asked by the affiant to identify himself, the caller said:

"Me? I'm connected with it and I can't give you my name. Check it out and see."

Although the committee was forestalled in its efforts to ascertain the precise role played by the Teamsters Union in the Lake County investigation when several witnesses claimed privilege (see *infra*, pp. 10, 12, 13), it developed considerable evi-

self-incrimination (R. 18). He continued to do so when asked whether he knew Michael Sawochka, secretary-treasurer of Local 142 (Gary) of the Teamsters Union (R. 19), whether James Hoffa, Teamsters Union president, was "contacted" in connection with "matters . . . [which] were being presented to a grand jury in Lake County" (R. 20), and whether "he [Hoffa], in turn, contacted Mr. Sawochka" (R. 20-21).

The committee counsel, in order to make clear to Raddock "the subject matter being inquired into" and as a basis "upon which to predicate further testimony", at this point read a summary of "background" information in the possession of the committee (R. 21, 23-24). The committee had information, counsel said, that in June of 1956 certain individuals, including Chapman, the Carpenters Union general treasurer, purchased land in Lake County, Indiana; that the property was in an area through which a proposed public highway was to pass; that several months later the land was sold to the State "at a \$78,000 profit on

dence of a connection: Thus, it established that Holovachka, shortly following his announcement of the abandonment of the investigation, was the recipient, through certain complicated transactions, of Teamsters Union funds. See Hearings before the Select Committee on Improper Activities in the Labor or Management Field, 85th Cong., 2d sess., Part 31, May 27, June 4, 5, 6, 9, 25, 26, and 27, 1958, pp. 12050-12103 (received in evidence, R. 155-157); Second Interim Report of the Select Committee, S. Rept. No. 621, 86th Cong., 1st sess., Part 2, October 23, 1959, pp. 558-560, 592 (Govt. Ex. C, R. 159-162, 170-173). The committee also had evidence that during the week preceding Holovachka's announcement Raddock, following communication between petitioner and the head of the Teamster's Union, James Hoffa, placed several long-distance telephone calls

a \$20,000 investment"; that part of the profits were paid by Chapman to "a deputy in the right-of-way office of the Indiana Highway Department"; that petitioner and Blaier, the second general vice president of the Carpenters Union, were also "[i]nvolved in this situation"; that petitioner, Blaier, and Chapman, when questioned about the matter before the "Gore committee" (the Subcommittee on Public Roads of the Senate Committee on Public Works) during hearings held in May and June of 1957, "invoked the fifth amendment"; that, beginning July 22, 1957, the matter was presented to the Lake County grand jury by the county prosecutor, Holovachka; that the grand jury recessed on July 23 and thereafter considered the matter for an additional day on August 19, 1957; that petitioner, Blaier, and Chapman did not appear before the grand jury because Holovachka "did not subpoena them, or could not"; that on August 20 Holovachka announced that "no indictments . . . would be forthcoming" because of "lack of jurisdiction"; that, "through an attorney whom Holovachka refused to identify", the Union officers "made restitution to the State of the \$78,000 profit made on the deal"; and that subsequently petitioner, Blaier, and Chapman were indicted "on this deal" in Marion County, Indiana (R. 21-22).

to Michael Sawochka, a Teamsters official in Gary. Second Interim Report, pp. 555, 592.

* See *Investigation of Highway Right-of-Way Acquisition—State of Indiana*, Hearings before a Subcommittee of the Committee on Public Works, United States Senate, 85th Cong., 1st sess., May 15, 16, and June 10, 1957, pp. 161 ff.

* I.e., the "deal" involving the land transactions. See *supra*, pp. 124-9.

"We are inquiring", the committee counsel said (R. 23),

into the situation in connection with the presentation before the grand jury in Lake County, Ind.; the intervention by certain union officials into that matter, and the part that was played by Mr. Hutcheson himself, Mr. Sawochka, the secretary-treasurer of local 142 of the Teamsters, and Mr. James Hoffa, the international president of the Teamsters.

In response to a question by the chairman as to whether there was "information that either union funds were used in the course of these transactions or that the influence of official positions of high union officials was used in connection with this alleged illegal operation", counsel said that there was "information along both lines" (R. 23). The chairman, after referring to another situation in the committee's experience in which union funds were used for the purpose of "fixing a case", said (*ibid.*):

That is the interest of this committee in a transaction of this kind or alleged transaction of this kind, to ascertain again whether the funds or dues money of union members is being misappropriated, improperly spent, or whether officials in unions are using their position[s] to intimidate, coerce, or in any way, illegally promote transactions where the public interest is involved.

Following counsel's "background" summary, the questioning of Raddock was resumed. He continued, however, to claim his Fifth Amendment privilege as to all relevant questions (R. 27-39, 42-44).

4. Other witnesses heard on the same day (June 26th) as Raddock were Sawochka, the secretary-treasurer of Teamsters Local 142 (R. 45), Joseph Sullivan, an attorney for Local 142 (R. 56, 57), and Blaier, the second general vice president of the Carpenters Union and one of petitioner's codefendants under the Marion County indictment (R. 76, 77). Sawochka and Blaier, like Raddock, refused to answer all pertinent questions (R. 47-52, 82-86).^{*} Sullivan answered some questions, but refused to answer others (R. 56-76) on the ground that they invaded the "attorney-client" privilege (R. 58, 65-66, 69-72). He acknowledged that he had physically delivered the check by which "restitution" had been made to the State of Indiana (see *supra*, p. 11), but refused to identify the person from whom he received the check (R. 70-72).

During the interrogation of Blaier, his counsel (who also represented petitioner, see R. 76, 90), called the committee's attention to the fact that the witness was one of the defendants named in the Marion County indictment and sought assurance from the committee that his client would not be interro-

^{*} Sawochka invoked the privilege against self-incrimination (R. 47-52). Blaier based his refusal on the ground that the question, in each instance, related "solely to a personal matter not pertinent to any activity which this committee is authorized to investigate, and also because it might aid the prosecution in the case in which I am under indictment" (R. 82, 83-84, 86). The committee, possibly because it thought Blaier intended by this statement to invoke the privilege against self-incrimination (see R. 86), did not order him to answer.

Nor were the hearings "tainted" by the fact that at their close, after the committee had completed its legislative function of gathering the facts pertaining to this particular subject of inquiry, the chairman offered to cooperate with Indiana's law enforcement officials if they indicated an interest in inquiring further into the details of what appeared to be an offense against the laws of Indiana, evidence of which had been uncovered by the committee in discharging its federal legislative duties. This offer of appropriate cooperation between federal and state officials does not show that the committee's purpose in conducting the inquiry was exposure for the sake of exposure or that it was otherwise inconsistent with proper legislative ends. In any event, the motives of particular committee members cannot vitiate an investigation which has been instituted by a House of Congress if that body's legislative purpose is being served.

II

The fact that at the time of the committee's inquiry there was pending against petitioner a state indictment, to which the information sought by the committee indirectly related, could not constitutionally preclude the committee from pursuing its inquiry.

The claim that the committee sought to "pretry" the state charges pending against petitioner and his fellow union officials Blaier and Chapman in Marion County, relating to their alleged bribery of an Indiana highway official in connection with the so-called "land deal" in Lake County, is baseless. The committee

scrupulously refrained from inquiring about the subject matter of that indictment. It may be—we do not dispute the point—that if petitioner, in response to the committee's inquiries concerning the suspected "fix" of the Lake County grand jury investigation, had admitted using union funds to bribe the Lake County prosecutor, his admission would have been admissible against him at his trial on the Marion County indictment as evidence of consciousness of guilt (i.e., of the "land deal" charges, which the Lake County grand jury had under investigation). But the pendency of the Marion County indictment at the time of the committee hearing could in no event have precluded the committee from pursuing its proper legislative inquiry into whether union funds had been used for the improper purpose of "fixing" a case.

This would be true even if the pending indictment had been a federal one. *Sinclair v. United States*, 279 U.S. 263, 295. While the pending suit involved in that case was a civil action, it had unmistakable criminal overtones, and the rationale of the decision is broad enough to apply where the pending action is criminal in nature. The pending prosecution here, moreover, was a state prosecution. It would not be consistent with the Supremacy Clause to hold that a committee of Congress, inquiring into a matter undeniably germane to a valid mandate from its parent body, can be frustrated in its investigation by the fact that the information it seeks happens also to be relevant to the charges of a pending state indictment.

gated "on that subject" (R. 77). The chairman, in accordance with the committee's regular rule in such situations, stated that it would be the "rule or policy" of the committee not to question the witness on the "subject matter of the indictment"—though it might come within the committee's jurisdiction and sphere of interest—because the committee "recognize[d] that, where [a witness] is under indictment he should not be compelled to be a witness against himself on the subject matter involved in the indictment" (R. 77-78). Counsel sought an "understanding" with the chairman that the area to be avoided in the questioning would include, in addition to the specific subject matter of the indictment, matters which, though occurring after the events for which the witness was indicted, "might be used by the prosecution" to show the "origin and continuance" of the matters charged in the indictment. The chairman, however, declined to enter into any such understanding or agreement with counsel (R. 78). Advising counsel for the witness to "feel at liberty to [address the Chair]" if a question were asked to which he desired to object (R. 77), he directed the committee counsel to proceed with the interrogation (R. 78).

The committee counsel stated that he had no intention of going into the "matters for which Mr. Blaier is presently under indictment, namely the road situation out in Indiana" (R. 78), but that he did not propose to exclude from his inquiries the matter of the "fix" of the Lake County grand jury investigation (R. 83). On the latter subject the witness was

in fact questioned, both by the committee counsel and the chairman (R. 83-86).

Although the committee declined to accede to the request of Blaier's attorney that his client not be questioned with respect to the circumstances of Holo-vachka's abandonment of the Lake County investigation, there was at no time any question of the right of the witness to invoke his privilege against self-incrimination in respect to any phase of that subject that he might desire—as Raddock and Sawochka had been permitted to do earlier (*supra*, pp. 10, 12, 13).¹ Indeed, it appears that the committee was under the impression that Blaier intended to invoke his privilege against self-incrimination on the occasions when he refused—as he repeatedly did (R. 83-86)—to answer questions. See note 6, *supra*, p. 13.

5. On the following day, June 27, 1958, prior to the commencement of petitioner's interrogation, his counsel advised the committee that petitioner would "not resort to the guaranties of the fifth amendment" (R. 91). After referring to the pending Marion

¹ The chairman, for example, in interrogating the witness about a matter (a Drake Hotel bill) pertaining to the termination of the Lake County grand jury investigation, remarked that the matter related to a period a year later than the incidents involved in the pending indictment, so that any connection between it and the subject of the indictment was, at most, "by indirection." While, for this reason, the chairman declined to consider the matter one falling within the committee's policy of self-restraint, he made it clear that if the witness "want[ed] to exercise [his] privilege [against self-incrimination], that [would be] all right" (R. 86). Cf. R. 85.

County indictment (*supra*, pp. 6-7), counsel stated to the committee that (R. 92; see also R. 93-94)

any inquiry * * * into or about any of the facts related to or which might be related to such indictment and the transactions recited therein, however remote the same may be, and whether occurring before or after the transaction['] recited in the indictment, or as to any matter which might be attempted to be used in furtherance of the prosecution thereof, would be improper, without appropriate pertinency and outside the scope of the investigation which this committee is authorized to make.

The chairman replied that the committee would proceed as on the previous day, and that if counsel wished to raise any issue with respect to the jurisdiction of the committee or the propriety of a specific question he should do so as the interrogation proceeded (R. 94).

After petitioner had been asked by the committee counsel, and had answered, a series of questions concerning his career with the Carpenters Union (R. 94-96), he was asked how long he had known Max Raddock. His counsel inquired whether the "line of questioning" was going to relate to "the book" (*Portrait of an American Labor Leader: William L. Hutcheson*; see *supra*, p. 8) or to "the Lake County transactions". The committee counsel, observing that "Mr. Raddock is not under indictment in any conspiracy with Mr. Hutcheson", stated that he was "just going to ask Mr. Hutcheson about his relationship with Mr. Raddock" (R. 96). The chairman

thereupon specified, as follows, the matters concerning which petitioner would be interrogated and those about which he would not be questioned (R. 96-97):

Let the Chair say this: I have gone into the matter a little to ascertain where the line of questioning may go. He will be interrogated regarding the book. He will also be interrogated regarding the use of union funds in a project which, on the face of it at least, appears to have the objective which was to obstruct justice.

So he will be interrogated about those things. As to any act covered in the indictment for the period of which the crime is alleged in the indictment, he will not be interrogated. But the matters that he will be interrogated about are subsequent to the time that the offense in the indictment was charged.

Shortly thereafter, following a series of questions and answers relating to his associations with Raddock in connection with the book (R. 97, 106-110, 113-121), petitioner was asked, and refused to answer, the questions which form the bases of the several counts of the instant indictment (R. 123-124, 126-127, 129-130, 136-137, 145-146, 147-150, 151). The questions, each of which, either on its face or in context, was related to the committee's inquiry into the circumstances surrounding the termination by Holovachka of the Lake County grand jury investigation and whether union funds were used to procure its abandonment, were as follows:

Has he [Mr. Raddock] received from the union payment for acts performed in your be-

half and for you as an individual? (R. 123)
(Count One, R. 5).

Have you, unrelated to this offense charged in the indictment now against you, engaged the services of Mr. Raddock, and have you paid him out of union funds for the performance of those services, to aid and assist you in avoiding or preventing an indictment being found against you or being criminally prosecuted for any other offense other than that mentioned in this indictment? (R. 126) (Count Two, R. 5).

Did you engage the services of Mr. Raddock and pay him for those services out of union funds to contact, either directly or indirectly, the county prosecuting attorney, Mr. Holovachka, given name Metro, in Lake County, Gary, Ind.? (R. 126) (Count Three, R. 5).

Have you paid Max C. Raddock out of union funds for personal services rendered to you at any time within the past 5 years? (R. 129) (Count Four, R. 5).

Have you used union funds to pay Max C. Raddock for any services rendered to you personally, wholly disassociated from any matters out of which the pending criminal charge arose? (R. 129) (Count Five, R. 5).

Was he [Raddock] there [in Chicago] on union business for which the union had the responsibility for payment? (R. 136) (Count Six, R. 5).

Were Mr. Raddock's expenses paid on that trip by union funds while he was on union business? (R. 140) (Count Seven, R. 5).

You were out in Chicago at the same time [as Raddock]? (R. 146) (Count Eight, R. 6).

Were your expenses on that Chicago trip paid by the union? (R. 146) (Count Nine, R. 6).

Were you out in Chicago at that time on union business? (R. 147) (Count Ten, R. 6).

Do you know Mr. James Hoffa? (R. 148) (Count Eleven, R. 6).

Did you make an arrangement with Mr. Hoffa that he was to perform tasks for you in return for your support on the question of his being ousted from the A.F.L.-CIO? (R. 148) (Count Twelve, R. 6).

Isn't it a fact that you telephoned Mr. Hoffa from your hotel in Chicago on August 12, 1957? (R. 148) (Count Thirteen, R. 6).

And wasn't that telephone call in fact paid out of union funds, the telephone call that you made to him on August 12? (R. 149) (Count Fourteen, R. 6).

Do you also know Mr. Sawochka, of the Brotherhood of Teamsters? (R. 149) (Count Fifteen, R. 6).

Isn't it a fact that you had Mr. Plymate, who is a representative of the Brotherhood, telephone, and your secretary telephone, Mr. Sawochka from your room on August 13, 1957? (R. 149) (Count Sixteen, R. 6).

And isn't it a fact that that telephone bill and that telephone call was paid out of union funds? (R. 150) (Count Seventeen, R. 7).

Did you have any business with local 142 of the Teamsters in Gary, Ind.? (R. 151) (Count Eighteen, R. 7).

Petitioner refused to answer each question on the ground that it related (R. 123, 126, 129, 137, 140, 146, 147-150, 151)—

solely to a personal matter, not pertinent to any activity which this committee is authorized to investigate, and also [because] it relates or might be claimed to relate to or aid the prosecution in the case in which I am under indictment, and thus be in denial of due process of law.

In each instance, the committee overruled the stated ground of refusal and directed petitioner to answer; petitioner, on each occasion, persisted in his refusal (R. 123-124, 126-127, 129-130, 137, 140, 145, 146, 147-150, 151.)

Repeatedly during the questioning, petitioner, in response to committee inquiries, explicitly disclaimed reliance on the privilege against self-incrimination (R. 125, 127, 130, 135, 146). He stated his concern that there "be no actual or apparent violation on [his] part" of (R. 147)—

the provisions of the A.F.L.-C.I.O. code of ethics concerning union officers who invoke the fifth amendment when asked about their official conduct * * *

* On January 28, 1957, the Executive Council of the A.F.L.-C.I.O. while recognizing and defending the right of every individual to the "protections afforded by the Fifth Amendment", stated in an official statement, later incorporated into the organization's Code of Ethics, that "It is the policy of the A.F.L.-C.I.O. however, that if a trade-union official decides to invoke the Fifth Amendment for his personal protection and to avoid scrutiny by proper legislative committees, law-enforcement agencies or other public bodies into alleged corrup-

6. Following petitioner's testimony, the Chairman, at the conclusion of the day's proceedings (which also concluded the hearings), summarized the evidence which the committee had heard during the hearings and stated certain of his conclusions (R. 152-154). He said in part (R. 153-154):

* * *

The testimony further indicates that certain high officials of both the Teamsters and the Carpenters Unions, two of the largest unions in the country, with the help and assistance of Mr. Raddock were involved in a conspiracy to subvert justice in the State of Indiana.

All the facts regarding this conspiracy undoubtedly have not been developed by the committee.

Further exposure we believe can and should be made. We will be glad to assist and help law enforcement officials in the State of Indiana if they determine that they would interest themselves in the matter.

* * *

tion on his part, he has no right to continue to hold office in his union." *New York Times*, January 29, 1957, p. 18, col. 5. The statement was ratified and approved in a resolution adopted by the general convention held in December 1957. *New York Times*, December 13, 1957, p. 24, cols. 7-8. As noted in its official publication, *AFL-CIO Codes of Ethical Practices* (Publication No. 50, May, 1958), p. 13, this statement of policy does not require "automatic" expulsion of any trade union leader who invokes the Fifth Amendment. It is where, upon investigation, "it is found that the Fifth Amendment was in fact invoked as a shield to avoid discovery of corruption on his part" that the official is deemed to have "no right to continue to hold trade union office." *Id.*, p. 14.

At petitioner's trial, Senator McClellan testified as follows with respect to the foregoing statement (R. 165):

Our legislative function had been performed in seeking information regarding crimes and improper activities. Some evidence had been presented indicating the possibility of a further crime involving this defendant possibly and officers of another large union. It has been our practice to cooperate with state and federal officials where any evidence is developed before us with respect to a crime having been committed. Our legislative purpose is to search out and find if crime has been committed.

My statement here is to the effect that if the state officials desired to pursue any testimony that we had developed, we would cooperate with them and make the record available to them.

In finding petitioner guilty, Judge Morris made an oral "ruling" in which he held that "[t]he Sacher case" (*Sacher v. United States*, 252 F. 2d 828 (C.A. D.C.), reversed on other grounds, 356 U.S. 576) was "absolutely dispositive of what is involved in this case." Pointing out that petitioner disclaimed

*In the *Sacher* case, one of the dissenting opinions expressed the view that the courts "should be slow . . . to hold" that a person could be compelled to be a witness against himself "by supplying obviously self-incriminating information, particularly when the area protected by the First Amendment is threatened, though he does not rest his objection on the Fifth." 252 F. 2d at 839-840 (emphasis in the original). The court of appeals, in rejecting this view, said (at 837):

"The short and simple answer to this is that every witness who thinks any answer will or may incriminate him has an

reliance upon the "immunity clause of the Fifth Amendment", the court held that "the only way he could properly seek" the protection of that clause was to invoke it (R. 174).

SUMMARY OF ARGUMENT

I

The committee's inquiry into whether union funds had been used by union officers to "fix" a state grand jury investigation into their personal affairs was germane to a valid legislative purpose—the committee's authorized study of the "extent to which criminal or other improper practices are, or have been, engaged in in the field of labor-management relations" in order to "determine whether any changes are required in the laws of the United States" pertaining to this field. That there might be overlap between the areas of activity of a congressional committee and those of a grand jury would not invalidate an investigation conducted by the committee in pursuance of its authorized legislative purpose.

absolute protection in the Fifth Amendment. Unconsciously, perhaps, the dissent shrinks from 'forcing' a witness to raise the Fifth Amendment because some people may draw dark inferences from its use. Over recent years the frequent employment of the Fifth Amendment has, in the minds of some, brought it into 'disrepute.' The Fifth Amendment plainly—and properly—was intended as a shield against selfincrimination; the First Amendment was not. The use of the First Amendment to shield one from supplying 'obviously incriminating information about himself' would be a perversion of the Constitution, needless so long as the Fifth Amendment stands. * * *

III

Petitioner's claim that he would have been prejudiced, had he asserted the privilege against self-incrimination, is groundless. The argument is that, if he had claimed the privilege, the fact could have been used against him at the trial of the Marion County indictment. This, he argues, made it a violation of due process for the committee to put him in a position where he was obliged either to claim privilege or to testify under the threat of the contempt sanction.

This line of reasoning necessarily assumes that this Court would be prepared to overrule its unanimous decision in *United States v. Murdock*, 284 U.S. 141, holding that the privilege against self-incrimination need not be recognized in a federal inquiry where the feared incrimination relates to a state offense. For if a witness may be compelled to give testimony before a federal body which would incriminate him under state law, it cannot be constitutionally objectionable for the federal authority to excuse him from the necessity of testifying if he is prepared to claim the privilege against self-incrimination. We show in the next Point that there is no occasion to reconsider the *Murdock* rule in this case, in which petitioner not only did not claim, but disclaimed, the privilege against self-incrimination. But the argument has other fatal defects.

1. Even if, on its merits, the argument were sound, it would be a sufficient answer, we believe, that it was not made to the committee. A proper respect for the committee required that if this was petitioner's reason for declining to invoke his privilege

he or his attorney should have apprised the committee of the difficulty so that an appropriate ruling might be made. The only reason which petitioner gave to the committee was quite different: "concern" that there "be no actual or apparent violation on [his] part" of the provision of the A.F.L.-C.I.O. Code of Ethics which states that a union official who invokes his Fifth Amendment privilege in order to avoid official scrutiny into alleged corruption on his part may not continue to hold his union office.

2. As to the merits of the contention, it has been clear since *Slochower v. Board of Education*, 350 U.S. 551, that it is violative of due process for any government, state or federal, to permit the use against a person of an adverse inference drawn from his invocation of his Fifth Amendment privilege. Indiana, for example, certainly could not have adduced at petitioner's trial, as part of its case in chief, the fact that petitioner had pleaded his Fifth Amendment privilege before the committee (if he had done so). Petitioner argues, however, that if he elected to take the stand in his own behalf at his state trial a different rule would apply—that in that event Indiana could (without violating due process) permit the prosecution to elicit on cross-examination, in attempted impeachment of his assertions of innocence as a witness, the fact that he had pleaded his Fifth Amendment privilege before the committee.

Although there is an Indiana decision holding that where the defendant in a criminal trial testifies in his own behalf it is proper for the State to show on cross-examination that at a prior trial of an alleged

accomplice he was called as a witness and refused to answer a question on the ground that it might incriminate him, it is not at all clear that such a result would be countenanced by this Court in the light of the *Slochower* decision—at least where, as in *Slochower* and in the hypothetical case which petitioner poses, the prior claim of privilege was under the Federal Constitution and the privilege was invoked before a federal body (in the actual Indiana case the claim of privilege had been under the State constitution). *Adamson v. California*, 332 U.S. 46, and *Twining v. New Jersey*, 211 U.S. 78, on which petitioner rests his assertion that it would not be violative of due process for Indiana to permit the drawing of an adverse inference from his prior claim of privilege if he took the stand at his state trial, are distinguishable. Those cases, holding that a state does not deny due process by permitting comment upon an accused's failure to testify at his trial in explanation or denial of incriminating evidence, did not involve the drawing of an adverse inference from a prior claim of federal privilege in a federal inquiry—the issue on which *Slochower* turned.

3. But whatever assumptions one makes as to Indiana law and whatever room for difference there may be as to the proper application of the *Adamson*, *Twining* and *Slochower* cases in the hypothetical situation petitioner poses, there is a fundamental defect in his argument. If the State's action in permitting the drawing of an adverse inference from petitioner's claim of privilege before the committee would be fundamentally unfair, then this Court would be free to

deal with the matter, if it should become necessary, on review of the state conviction. If it would not be unfair, petitioner has no more basis for claiming a violation of due process in the federal proceeding than he would in the state proceeding. It is incongruous to argue that the potential injury apprehended in the federal proceeding—possible prejudice in the state case—is so grave that the Court is required to intervene on constitutional grounds, and to argue, at the same time, that if the anticipated prejudice were actually to occur the Court would be powerless to deal with it directly—or review of the state conviction. The federal government cannot be required to stay its hand because in a subsequent state proceeding the State might conceivably fail to meet its constitutional obligations.

IV

There cannot be the slightest doubt that the committee would have honored a claim of privilege by petitioner as to any aspect of its inquiry concerning the "fix" of the Lake County grand jury investigation, and that petitioner was well aware of that fact. (The committee, in petitioner's presence, accepted claims of privilege by other witnesses on this subject, and petitioner specifically disclaimed his privilege when asked by the committee if he was invoking it.) This being so, the possibility that the testimony which the committee sought from petitioner might have been admissible against him at his state trial could not make it a violation of his rights for the committee to require him to state what he knew about this matter

or to claim his privilege. The privilege is an option of refusal, not a prohibition of inquiry.

There is no occasion in this case for the Court to reexamine its holdings in *Hale v. Hensel*, 201 U.S. 43, and *United States v. Murdock*, 284 U.S. 141, that the privilege against self-incrimination need not be recognized in a federal inquiry where the feared incrimination relates to a state offense. One who has been at pains to disclaim the privilege against self-incrimination has no standing to challenge a rule which limits its scope. Moreover, petitioner would not be helped in any way by a ruling here that the committee was required to do that which it was ready to do voluntarily if petitioner requested.

V

A witness before a congressional committee who has deliberately and repeatedly disclaimed reliance upon the privilege against self-incrimination may not insist upon its protection under another name.

What petitioner, in essence, sought from the committee was to be granted the protection of the privilege against self-incrimination without invoking it. The law recognizes no such right on the part of a witness before a congressional committee. It is true that a claim of privilege requires no "special combination of words," that a witness "need not have the skill of a lawyer to invoke" it. *Quinn v. United States*, 349 U.S. 155, 162. But it is also true that a witness who would avail himself of the benefits of the privilege must claim it—"in language that a committee may reasonably be expected to understand as

an attempt to invoke" it. *Emaspah v. United States*, 349 U.S. 190, 194. Certainly it has never been suggested that one who disclaims the privilege is entitled to its protection.

Petitioner has in effect attempted to make the Due Process Clause of the Fifth Amendment do service for the Self-Incrimination Clause. Such a "perversion of the Constitution" (*Sacher v. United States*, 252 F. 2d 828, 837 (C.A. D.C.), reversed on other grounds, 356 U.S. 576) is not to be sanctioned. The Constitution does not give a privilege against self-incrimination, for the use of those who are willing to claim it candidly, and, in addition, a parallel privilege for the use of those whose only legitimate ground for refusing to answer proper questions is the fear of self-incrimination but who for personal reasons are unwilling to claim the appropriate privilege. The privilege against self-incrimination is a specific guaranty of civil liberty, free of the need for applying such general tests as characterize decision under the Fourteenth Amendment or the Due Process Clause of the Fifth Amendment (e.g., "ordered liberty"). To create a vaguely parallel privilege, claimable by invoking "due process" or similar general concepts, would confuse and dilute the specific guaranty. Nor would the introduction of such a principle into the law serve any useful purpose. As we have shown, every legitimate protection to which petitioner was entitled was available to him under the privilege against self-incrimination, and his claim that he would have been prejudiced if he had asserted the privilege is groundless. It is not unfair to require

a witness in such a situation to forego equivocation and either claim or not claim his privilege. If the witness disclaims all reliance on the privilege, the committee can properly take him at his word.

ARGUMENT

We shall argue, *first*, that the committee's inquiry into whether union funds had been used to "fix" a grand jury investigation into the personal affairs of officers of the union was within the committee's authority under its authorizing resolution, and that the resolution was adopted pursuant to a valid legislative purpose (*infra*, pp. 33-39); *second*, that the fact that a state indictment was pending against the union officers at the time of the inquiry did not, and could not constitutionally, preclude the committee from pursuing its inquiry (*infra*, pp. 39-44); *third*, that petitioner's claim that he would have been prejudiced, had he asserted the privilege against self-incrimination, is groundless (*infra*, pp. 44-51); *fourth*, that the fact that the testimony sought from petitioner might have tended to show consciousness of guilt of the offenses charged in the pending indictment—and on this theory might have been admissible against him at his state trial—did not make it improper or violative of due process for the committee to require him to state what he knew about the subject under inquiry, at least in circumstances where it is plain that a claim of privilege under the Fifth Amendment would have been accepted if asserted (*infra*, pp. 52-54); and, *fifth*, that a witness before a congressional committee who has deliberately and repeatedly disclaimed reliance

upon the privilege against self-incrimination may not insist upon its protection under another name (*infra*, pp. 54-58).

I

THE COMMITTEE'S INQUIRY INTO WHETHER UNION FUNDS HAD BEEN USED BY PETITIONER AND FELLOW UNION OFFICIALS TO "FIX" A STATE GRAND JURY INVESTIGATION INTO THEIR PERSONAL AFFAIRS WAS GERMANE TO THE STUDY WHICH THE COMMITTEE'S AUTHORIZING RESOLUTION, ADOPTED PURSUANT TO A VALID LEGISLATIVE PURPOSE, DIRECTED IT TO CONDUCT

The inquiry in which the committee was engaged when petitioner appeared before it, and to which the questions he refused to answer pertained, was whether funds of the Carpenters Union, entrusted to petitioner's and his fellow union officials' care for the protection and advancement of union interests, had been corruptly diverted to purely personal uses of their own—the bribery of the Lake County prosecuting attorney, Holovachka, to call off a grand jury investigation which he had undertaken into certain allegedly illegal acts of those union officials connected with the so-called "land deal" or "highway scandal" in that county. *Supra*, pp. 6-20. This inquiry came squarely within the committee's mandate from the Senate (*supra*, pp. 4, 5)—

to conduct an investigation and study of the extent to which criminal or other improper practices or activities are, or have been, engaged in in the field of labor-management relations or in groups or organizations of employees or employers to the detriment of the interests of the public, employers or employees, and to

determine whether any changes are required in the laws of the United States in order to protect such interests against the occurrence of such practices or activities.

And certainly the authorizing resolution was adopted pursuant to a valid legislative purpose. Cf. *McGrain v. Daugherty*, 273 U.S. 135, 160-178; *Sinclair v. United States*, 279 U.S. 263, 291-295; *Quinn v. United States*, 349 U.S. 155, 160-161; *Watkins v. United States*, 354 U.S. 178, 187; *Barenblatt v. United States*, 360 U.S. 109, 111; and see *Atuppa v. United States*, 201 F. 2d 287, 288-289 (C.A. 6) (resolution creating the Kefauver committee to investigate organized crime in interstate commerce)."

Petitioner's argument that the words "to conduct an investigation and study of the extent to which criminal * * * practices or activities are, or have been, engaged in * * *" show that the resolution directed the committee "to undertake the functions of a grand jury" (Br. 72, 34-35), and his related contention that the committee, under the resolution, "assumed powers granted only to the Executive and

"The Court may judicially notice, since it is a matter of common knowledge, that the Labor-Management Reporting and Disclosure Act of 1959, 73 Stat. 519, 29 U.S.C., Supp. II, 401 ff., was a direct consequence of the widespread abuses in the labor-management field brought to light by the committee involved in this case. This is, in any event, amply substantiated by the Act itself and its legislative history. See § 2(b), 73 Stat. 519, 29 U.S.C., Supp. II, 401(b) ("Declaration of Findings, Purposes, and Policy"); S. Rept. No. 187, 86th Cong., 1st sess., on S. 1555, pp. 2, 6, 9, 10, 13, 14, 15, 16, 17, 70, 118; H. Rept. No. 741, 80th Cong., 1st sess., on H.R. 8342, pp. 1-2, 6, 9, 11-12, 13, 76, 83, 96, 99, 105, 106 Cong. Rec. 5983, 15521.

the Judiciary, and thus acted beyond its jurisdiction" (Br. 34-35, 70, 74-76), are without substance. An authorization by a House of Congress to one of its committees to investigate the extent to which criminal activities are or have been engaged in in a field over which Congress has authority to legislate (for example, as in this case, interstate commerce), *for the purpose of determining whether remedial legislation is necessary and reporting thereon to Congress*, can in no sense be said to vest in the committee "the functions of a grand jury." The fact that there might be overlap between the areas of activity of such a committee and those of a grand jury—a not infrequent occurrence—could not make improper an investigation conducted by the committee in pursuance of its authorized *legislative* purpose."

Equally insubstantial is his argument (Br. 70-73) that the committee's purpose in interrogating him was solely to "expose" him, without reference to any legitimate legislative purpose. Cf. *Watkins v. United States*, 354 U.S. 178, 200 ("We have no doubt that there is no congressional power to expose for the sake of exposure."). The argument is based upon the remarks of the committee chairman—made at the

¹¹ Cf. *Barenblatt v. United States*, 360 U.S. 109, 111-112: "Since Congress may only investigate into those areas in which it may potentially legislate or appropriate, it cannot inquire into matters which are within the *exclusive* province of one of the other branches of the Government. Lacking the judicial power given to the Judiciary, it cannot inquire into matters that are *exclusively* the concern of the Judiciary. Neither can it supplant the Executive in what *exclusively* belongs to the Executive. . . ." (Emphasis added.) And see *Tenney v. Brandhove*, 341 U.S. 367, 378.

conclusion of the hearings—in which he made a “statement” for the record summarizing the evidence which the committee had heard and reciting certain conclusions to which he believed the evidence pointed. *Supra*, p. 21. Referring to a “conspiracy to subvert justice in the State of Indiana”, which he said the evidence before the committee tended to indicate had been entered into by “certain high officials of both the Teamsters and the Carpenters Unions”, the chairman said (R. 153-154):

All the facts regarding this conspiracy undoubtedly have not been developed by the committee.

Further exposure we believe can and should be made. We will be glad to assist and help law enforcement officials in the State of Indiana if they determine that they would interest themselves in the matter.

Petitioner's attempt to demonstrate from these remarks a purpose on the part of the committee to “expose for the sake of exposure” is refuted by Senator McClellan's trial testimony concerning the statements in question. When he made these remarks, as the Senator pointed out, “Our legislative function had been performed * * *.” Continuing, he observed

“R. 165; *supra*, p. 22. The Senator described the committee's legislative function as the seeking of “information regarding crimes and improper activities.” *Ibid.* Petitioner criticizes this aspect of the chairman's statement, saying that it evidences a mistaken conception of the committee's duties as embracing “functions, not of legislatures, but of law enforcement officers, of prosecutors, and of grand juries” (Br. 76). We have pointed out, however, that the resolution creating the committee directed it to investigate the extent to which

that "evidence had been presented indicating the possibility of a further crime involving this defendant possibly and officers of another large union," and that it had been the practice of the committee to "cooperate with state and federal officials where any evidence [was] developed before us with respect to a crime having been committed." It was for this reason, the Senator stated, that he made the "statement * * * to the effect that if the state officials desired to pursue any testimony that we had developed, we would cooperate with them and make the record available to them." R. 165; *supra*, p. 22.

In short, the committee's legislative function having been completed (through the gathering of information bearing on potential new federal legislation) and the hearings concluded, the chairman summarized for the record what the evidence tended to establish, and indicated that the committee would be willing to cooperate with Indiana law enforcement officials by making the record of the committee's proceedings available to them if they wished to investigate the details of what appeared to be a state offense (distinct from the offenses charged in the pending indictment), evidence of which had been uncovered by the committee in the course of its discharge of its federal legislative duties. Cf. *Elkins v. United States*, 364 U.S. 206, 221. We submit that no purpose to "expose

"criminal or other improper practices or activities are, or have been, engaged in in the field of labor-management relations * * *." *Supra*, pp. 33-34. As to the validity of the authorization as a legislative function, see *supra*, pp. 34-35.

for the sake of "exposure" can reasonably be inferred from the chairman's statements.

Furthermore, the *Watkins* decision itself is a complete answer to petitioner's contention (354 U.S. at 200):

But a solution to our problem is not to be found in testing the motives of committee members for this purpose. Such is not our function. Their motives alone would not vitiate an investigation which had been instituted by a House of Congress if that assembly's legislative purpose is being served."

There is, finally, no merit to the argument (Pet. Br. 73-74) that the committee did not need petitioner's testimony for any fact-finding purpose and that his interrogation was consequently for no legitimate legislative purpose. A congressional committee must be its own judge of the amount of evidence needed to enable it to discharge its legislative responsibilities and report back to its parent body with findings and recommendations. It would be inappropriate for the judicial branch to undertake to review the exercise of so peculiarly discretionary a determination. Moreover, the "proof" relied on by petitioner as demonstrating that the committee had no need for his testimony—that in its second interim report the committee was able to report, notwithstanding

¹¹ Cf. *Barenblatt v. United States*, 380 U.S. 109, where the Court sustained a conviction for contempt of a congressional committee in a case in which a "declared purpose of the investigation was to identify to the people of Michigan the individuals responsible for the alleged, Communist success there." 380 U.S. at 158 (dissent of Mr. Justice Black).

petitioner's refusal to answer questions pertinent to the subject, that it found from the evidence that Raddock was used by petitioner "as a fixer in an attempt to head-off the indictment of" himself and his co-officials of the Carpenters Union (Br. 73)—overlooks the fact that the committee had sought to ascertain the nature of the connection of the Teamsters Union with the "fix" about which it was inquiring, and that its efforts in this respect were largely frustrated by petitioner's and other witnesses' refusal to testify. See note 3, *supra*, pp. 9-10.

II

THE FACT THAT AT THE TIME OF THE COMMITTEE'S INQUIRY THERE WAS PENDING AGAINST PETITIONER A STATE INDICTMENT TO WHICH THE INFORMATION SOUGHT BY THE COMMITTEE INDIRECTLY RELATED DID NOT, AND CONSTITUTIONALLY COULD NOT, PRECLUDE THE COMMITTEE FROM PURSUING ITS INQUIRY

Petitioner's contention (Br. 41-47) that the committee attempted to "pretry a pending criminal case" (Br. 41) is wholly without merit. The "criminal case" referred to was the pending prosecution of petitioner and his fellow union officials Blaier and Chapman, in Marion County, for bribing and conspiring to bribe an Indiana highway official, Doggett, in connection with the so-called "land deal" or "highway scandal" in Lake County. *Supra*, pp. 6-7. The committee scrupulously refrained from inquiring about the subject matter of that indictment. *Supra*, pp. 13-14, 16-17. It neither questioned the petitioner about it nor offered evidence from other sources.

What the committee did seek to ascertain was whether union funds had been used to bribe the *Lake County prosecutor* to abandon a grand jury investigation. *Supra*, pp. 7-20. That grand jury investigation, it is true, involved an inquiry into charges relating to the highway matter which became the subject of the Marion County indictment, but otherwise the committee's inquiry was totally unrelated to the latter affair." It distorts the record to say that the committee attempted to "pretry a pending criminal case."

There is only one way in which answers from petitioner concerning the possible obstruction of justice in Lake County could affect the trial of the Marion County indictment. It may well be—we do not dis-

"As noted in the Statement, *supra*, pp. 14, 17, the committee chairman, during the testimony of Blasier, stated that the witness, as a matter of committee "rule or policy," would not be interrogated on the "subject matter of the indictment," and the same policy was announced with respect to petitioner during the latter's appearance on the stand. Despite the efforts of the attorney for the two witnesses to secure an "understanding" with the chairman that the area to be avoided under this self-imposed committee policy would include the matter of the "fix" of the Lake County grand jury investigation (on the ground that that subject, though not directly related to the subject of the indictment, was related to it "by indirection" (R. 86)), the chairman declined to enter into any such understanding, and both witnesses were, in fact, extensively questioned concerning the matter of the "fix". *Supra*, pp. 13-20. Petitioner was thus at no time under a misapprehension that the subject of the "fix," because of the connection between that matter and the subject of the indictment which his counsel pointed out, was not going to be inquired into by the committee under its "rule". There was in other words no confusion as to the fact that the committee intended to inquire, and did inquire, concerning the suspected "fix" of the Lake County investigation.

pute the point—that if petitioner, in response to the committee's questions, had admitted using funds of the Carpenters Union to bribe the Lake County prosecutor to halt the investigation, his admission would have been admissible at the Marion County trial as evidence of consciousness of guilt (i.e., of the "land deal" charges which the Lake County grand jury had under investigation).¹² Cf. *Davidson v. State*, 205 Ind. 564, 569 (1933); 2 Wigmore, *Evidence* (3d ed.) §§ 276, 278; 1 Wharton, *Criminal Evidence* (12th ed.), § 201 ff. On the other hand, if he had denied such conduct, his testimony would have been irrelevant to the charges of the pending indictment and so inadmissible under any theory. But whatever the propriety of petitioner's refusal to answer the particular questions (see pp. 44–58, *infra*), the pendency of the Marion County indictment at the time of the committee hearing could in no event have precluded the committee from pursuing its inquiry into the misuse of union funds in obstructing justice in another county, which inquiry was clearly pertinent to a proper federal legislative purpose.

This would be true even if the pending indictment had been a federal one. *Sinclair v. United States*, 279 U.S. 263, 295. In that case, at the time of Sinclair's appearance before the Senate Committee on Public Lands and Surveys (in connection with the Teapot Dome investigations), a joint resolution had been adopted by the Senate directing the President

¹² We show *infra*, pp. 52–53, that the committee would not have insisted on answers to the questions if petitioner had claimed the privilege against self-incrimination.

to cause suit to be instituted for the cancellation of certain oil leases (including one to the Mammoth Oil Company, of which the witness was president) and to "prosecute such other actions or proceedings, civil and criminal, as were warranted by the facts" (279 U.S. at 289). Pursuant to the resolution, a suit "charging conspiracy and fraud" had been commenced against the witness's company, and "application had been made for a special grand jury to investigate the making of the lease" (at 289-290). Sinclair declined to answer the committee's questions on the ground that "the Senate by the adoption of the joint resolution had exhausted its power and Congress and the President had made the whole matter a judicial question which was determinable only in the courts" (at 290). On appeal by the witness from his conviction for contempt of the Senate, this Court said (at 295):

Neither Senate Joint Resolution 54 nor the action taken under it operated to divest the Senate, or the committee, of power further to investigate the actual administration of the land laws. It may be conceded that Congress is without authority to compel disclosures for the purpose of aiding the prosecution of pending suits; but the authority of that body, directly or through its committees, to require pertinent disclosures in aid of its own constitutional power is not abridged because the information sought to be elicited may also be of use in such suits.

While the pending suit involved in that case was a civil action, as petitioner observes (Br. 46, 47), it is evident that the action had unmistakable criminal

overtones; application had already been made for a special grand jury. Certainly, the rationale of the decision applies to a situation in which the pending action is a criminal prosecution."

In the present case, moreover, the Supremacy Clause provides independent refutation of petitioner's argument. The pending prosecution here involved ~~was~~ a state prosecution. The Supremacy Clause, we submit, is inconsistent with the notion that a committee of Congress, inquiring into a matter undeniably germane to a valid mandate from its parent body, can be frustrated in its investigation by the fact that the information it seeks may happen also to be rele-

¹¹ *Delaney v. United States*, 190 F. 2d 107 (C.A. 1), relied on by petitioner (Br. 42, 44, 45, 47), does not aid him; indeed, to the extent that it is relevant, it supports the government. In that case, after the defendant had been indicted for alleged improprieties committed during his term of office as Collector of Internal Revenue for the District of Massachusetts, a House committee, previously established to inquire into the administration of the internal revenue laws, began an intensive investigation into the defendant's alleged derelictions. Many of the witnesses who appeared before the committee (the defendant himself was not called) had testified before the grand jury which returned the indictment, and the hearings afforded the public a preview of the prosecution's case. The court of appeals reversed the defendant's conviction and remanded for a new trial on the ground that the trial court had erred in failing to grant a continuance of the trial until the prejudicial effect of the publicity which had resulted from the committee's hearings had had a chance to wear off. The court made it clear, however, that it did not question the power of the committee to conduct its investigation. The court said (at 114): "We mean to imply no criticism of the action of the King Committee. We have no doubt that the committee acted lawfully, within the constitutional powers of Congress duly delegated to it."

vant to charges made in a pending state indictment. The pendency of such an indictment cannot, consistently with the Constitution, so immunize the indicted person from the reach of federal power as to make it improper for a congressional committee even to ask him questions having common relevance to the indictment and the committee's sphere of interest. The witness may claim his Fifth Amendment privilege," but he cannot successfully contend that the committee has no right to ask him questions.

III

PETITIONER'S CLAIM THAT HE WOULD HAVE BEEN PREJUDICED, HAD HE ASSERTED THE PRIVILEGE AGAINST SELF-INCRIMINATION, IS UNFOUNDED

Petitioner argues, however, that if he had claimed the privilege against self-incrimination before the committee "that fact could have been used against him at the trial of the Marion County indictment" (Br. 39). This, he argues, made it a violation of due process for the committee to put him in a position where he was obliged either to claim privilege or to testify under the threat of the contempt sanction. The suggestion appears to be that there is a privilege not to claim the privilege and yet to realize whatever benefits would attach to its assertion.

We note at the outset that this line of reasoning necessarily assumes that this Court would be pre-

¹⁷ Whether the committee would be required to honor the claim need not be considered, since here it is clear that the committee would have accepted the claim, if made, and, in any event, the privilege was not only not claimed, but was affirmatively disclaimed. See *infra*, pp. 52-54.

pared to overrule its unanimous decision in *United States v. Murdock*, 284 U.S. 141, holding that the privilege against self-incrimination need not be recognized in a federal inquiry where the feared incrimination relates to a state offense. For if a witness may be compelled to give testimony before a federal body which would incriminate him under state law, it can hardly be constitutionally objectionable for the federal authority to excuse him from the necessity of giving testimony if he is prepared to claim the privilege against self-incrimination. As we point out *infra*, pp. 52-54, there is neither need nor occasion to reconsider the *Murdock* rule in this case, in which petitioner not only did not claim the privilege against self-incrimination, but affirmatively and repeatedly disclaimed it. Petitioner's contention, at all events, falls of its own weight.

1. In the first place, even if his argument were sound, it would be a sufficient answer, we believe, that no such suggestion was advanced before the committee, either by petitioner or his counsel, as a reason why he ought not in fairness be called upon to plead his privilege. A proper respect for the processes of the committee required that if this were petitioner's reason for declining to invoke his privilege—if he truly felt that he was confronted with the dilemma he now conceives—either he or his attorney should have apprised the committee of the difficulty so that an appropriate ruling might be made. The only reason which petitioner gave to the committee was quite different: "concern" that there "be no actual or apparent violation on [his] part" of the

provision of the A.F.L.-C.I.O. Code of Ethics which states that a union official who invokes his Fifth Amendment privilege in order to avoid official scrutiny into alleged corruption on his part has no right to continue to hold his union office. R. 147; *supra*, p. 20.

2. As to the merits of this contention, we think it has been clear since *Slochower v. Board of Education*, 350 U.S. 551, if it was previously doubtful, that it is violative of due process for any government, state or federal, to permit the use against a person of an adverse inference drawn from his invocation of his Fifth Amendment privilege. Cf. *Grunewald v. United States*, 353 U.S. 391, 421-424; *Stewart v. United States*, 366 U.S. 1, 7, note 14; *Cohen v. Hurley*, 366 U.S. 117, 125. Indiana, for example, certainly could not have adduced at petitioner's trial, as part of its case in chief, the fact that petitioner had pleaded his Fifth Amendment privilege before the committee (if he had done so). The *Slochower* case is decisive of at least this much, and indeed we do not understand petitioner to contend otherwise.

Petitioner argues, however, that a different rule would apply if petitioner "elected to take the stand on his own behalf" at his state trial. It is the "law of Indiana", he says, "that a plea of self-incrimination could be the subject of adverse inference if the witness elected to take the witness stand on his own behalf at a subsequent trial". "And of course", he further states, "such an adverse inference at a trial in the Indiana courts would not violate the Fourteenth Amendment". For the latter proposition he cites

Adamson v. California, 332 U.S. 46, and *Twining v. New Jersey*, 211 U.S. 78 (Br. 39).

Although neither of the Indiana decisions cited by petitioner in support of his statement as to the "law in Indiana" is in point,¹⁰ Indiana has held that where the defendant in a criminal trial testifies in his own behalf it is not improper for the prosecution to show on cross-examination that he was called as a witness at a prior trial of an alleged accomplice and refused to answer a question on the ground that it might incriminate him. *Crickmore v. State*, 213 Ind. 586, 592-593 (1938). The court reasoned that, although it would have been improper for the prosecutor to comment upon the accused's prior invocation of privilege if he had not testified, it was permissible to do so where he had taken the stand, because "[b]y becoming a witness, he waived his right not to be required to give evidence against himself". 213 Ind. at 593. The rationale of the decision¹¹ would thus appear to be that the witness's prior invocation of privilege in some manner involved an admission of guilt ("evidence against himself"), which it was proper for the state to adduce on cross-examination

¹⁰ *State v. Schopmeyer*, 207 Ind. 538, 542-543, and *Watts v. State*, 296 Ind. 655, 663, reversed on other grounds *sub nom. Watts v. Indiana*, 336 U.S. 49, which petitioner cites for the rule that in Indiana a plea of self-incrimination can be the subject of adverse inference if the witness takes the stand on his own behalf at a subsequent trial (Br. 39), merely applied to the particular situations involved in those cases the well settled rule that a defendant who takes the stand on his own behalf at a criminal trial thereby waives his privilege against self-incrimination and may be cross-examined on the subject matter of his direct testimony like any other witness.

in order to impeach the credibility of his assertions of innocence as a witness in his own behalf.

We note, in the first place, that the claim of privilege involved in the *Crickmore* case was a claim under the Indiana Constitution;¹² the case thus did not involve the question whether Indiana could have used for impeachment purposes a witness's prior claim before a federal body of his *federal* privilege under the Fifth Amendment. But if we assume from the rationale of the decision that a similar result would be reached in a case in which (as in the hypothetical case which petitioner poses) the prior claim of privilege was before a federal body and under the Federal Constitution, it is not at all clear that such a result would be countenanced by this Court in the light of the *Slochower* decision, *supra*, 350 U.S. 551. For the precise holding of *Slochower* was that it is fundamentally unfair, and hence violative of due process, for a state to draw or permit the drawing of just such an adverse inference as Indiana permitted to be drawn in the *Crickmore* case from the invocation before a federal tribunal or agency of one's constitutional privilege under the Fifth Amendment not to be a witness against oneself. Cf. *Grunewald v. United States*, *supra*, 353 U.S. at 415-424; *Nelson v. Los Angeles County*, 362 U.S. 1, 7-8.¹³

¹² Article 1, § 14, forbidding compulsory self-incrimination under state law in language similar to that of the Fifth Amendment.

¹³ In *Grunewald* (reversing a federal conviction because the prosecution had been permitted, on cross-examination of the accused, to show that he had claimed his Fifth Amendment privilege before a grand jury when asked questions which he

The *Adamson* and *Twining* decisions—relied on by petitioner (see *supra*) for his statement that if petitioner elected to take the stand at his Indiana trial it would “not violate the Fourteenth Amendment” for the State to permit the drawing of an adverse inference from his prior plea of privilege—are distinguishable. Those cases held that a state does not deny due process by permitting comment upon an accused’s failure to testify at his trial in explanation or denial of incriminating evidence. *Adamson v. California*, 332 U.S. 46, 48–49; *Twining v. New Jersey*, 211 U.S. 78, 90–91. But for a state to permit the drawing by a jury of an adverse inference from an accused’s affirmative act of invoking his Fifth Amendment privilege in a prior federal proceeding involves discrete considerations. Cf. *Cohen v. Hurley*, 366 U.S. 117, 125, 127–129. The distinction explains the difference in result between the *Adamson* and *Twining*

answered in a way consistent with innocence at the trial), the decision was predicated on the Court’s supervisory power over the administration of federal criminal justice (at 424). While the case is thus not a square authority that such a use of a defendant-witness’s prior claim of privilege would violate due process, it is to be noted that the Court reaffirmed its *Slochower* decision (which did proceed on due process grounds) and again condemned the practice of drawing or permitting the drawing of an adverse inference from the making of such a claim (at 421–424).

In *Nelson*, the Court declared that in *Slochower* a “built-in” inference of guilt, derived solely from a Fifth Amendment claim, we held to be arbitrary and unreasonable.” 362 U.S. at 7. *Nelson* turned (like *Beilan v. Board of Education of Philadelphia*, 357 U.S. 399, and *Lerner v. Casey*, 357 U.S. 468), not on invocation of the constitutional privilege, but on failure of an employee to answer his public employer’s legitimate questions.

decisions, on the one hand, and *Slochower v. Board of Education, supra*, on the other. Cf. *Ullmann v. United States*, 350 U.S. 422, 426-427.

3. But whatever assumptions one makes as to Indiana law and whatever room for difference there may be as to the proper application of this Court's decisions in the *Twining*, *Adamson* and *Slochower* cases in the hypothetical situation petitioner poses, there is a fundamental defect in his argument. Petitioner contends that it is fundamentally unfair for a committee of Congress to ask him questions, however relevant to the committee's authorized purposes, and to require him either to testify, upon pain of contempt if he refuses, or to claim privilege. This is so, petitioner says, because the very fact of claiming privilege might in certain circumstances (i.e. if he should take the stand as a witness in a subsequent state proceeding) be used to his detriment by the State of Indiana. It is perfectly plain, therefore, that the only injury which petitioner apprehends or to which he can point is the injury which he claims the State might later inflict. The fundamental unfairness of which he complains could result only from the State's action—from its permitting an Indiana jury to draw an adverse inference from a prior claim of privilege. If this would be fundamentally unfair, then this Court would be free to deal with the matter, if it should become necessary, on review of the state conviction. If it would not be unfair, petitioner certainly has no more basis for claiming a violation of due process in the federal proceeding than he would in the state proceeding. In short, we fail to see how

petitioner can ask this Court to frustrate the federal inquiry into a matter of legitimate federal concern when the only claim of violation of petitioner's rights stems from the consideration that if the federal inquiry goes forward the State might conceivably pursue a course which would be fundamentally unfair. It is plainly incongruous to suggest that the potential injury apprehended in the federal proceeding—possible prejudice in the subsequent state case—is so grave that the Court is required to intervene on constitutional grounds, and to argue, at the same time, that if the anticipated prejudice were actually to occur the Court would be powerless to deal with it on review of the state conviction. If a question of "due process" proportions arises out of an impermissible inference drawn from a claim of privilege, then manifestly that question can be raised and decided in the proceeding in which the injury takes place. The federal government cannot be required to stay its hand because in a subsequent state proceeding the State might conceivably fail to meet its constitutional obligations.

IV

THE FACT THAT THE TESTIMONY WHICH THE COMMITTEE SOUGHT FROM PETITIONER MIGHT HAVE BEEN ADMISSIBLE AGAINST HIM AT HIS STATE TRIAL DID NOT MAKE IT AN INVASION OF PETITIONER'S RIGHTS FOR THE COMMITTEE TO REQUIRE HIM EITHER TO ANSWER OR TO RELY UPON HIS PRIVILEGE AGAINST SELF-INCRIMINATION. AT ALL EVENTS, HAVING DISCLAIMED THE PRIVILEGE AGAINST SELF-INCRIMINATION, HE HAS NO STANDING TO CHALLENGE THE MURDOCK RULE.

We have pointed out that the committee, in petitioner's presence, recognized and accepted claims by witnesses Raddock and Sawochka of their privilege against self-incrimination when they were asked questions relating to the "fix" of the Lake County grand jury investigation. *Supra*, pp. 10, 12, 13." Similarly, during the questioning of Blaier, who also testified in the presence of petitioner and who was represented in the proceedings by the same counsel as petitioner, the right of the witness to invoke his privilege against self-incrimination in respect of any phase of that subject was at all times recognized. *Supra*, p. 15, including note 7. Finally, on repeated occasions during the interrogation of petitioner himself, the committee specifically asked whether he was invoking his privilege against self-incrimination, and he in each instance specifically declared that he was not. *Supra*, p. 20; R. 125, 127, 130, 135, 146. There

²² In addition, the committee had on a previous occasion (in petitioner's absence) accepted a claim of privilege as to this matter made by Charles Johnson, Jr., a Carpenters Union official who the committee had information was involved in the "fix." (See note 3, *supra*, p. 9.) R. 52-56.

cannot be the slightest doubt, then, that the committee would have honored a claim of privilege by petitioner as to any aspect of this subject of inquiry, and that petitioner was well aware of that fact.

This being so, the possibility that the testimony which the committee sought from petitioner might have been admissible against him at his state trial (depending upon what the testimony was) could not make it a violation of petitioner's rights for the committee to require him to state what he knew about the matter under inquiry. The privilege against self-incrimination is "an option of refusal, not a prohibition of inquiry" (8 Wigmore, *Evidence* (3d ed.), § 2268 [emphasis in the original]). It must, in short, be claimed. *Quinn v. United States*, 349 U.S. 155, 162-165; *Emspak v. United States*, 349 U.S. 190, 194.

In *Hale v. Henkel*, 201 U.S. 43, 68-69, and *United States v. Murdock*, 284 U.S. 141, 149, this Court held that the privilege against self-incrimination need not be recognized in a federal inquiry where the feared incrimination relates to a state offense. Thus, the committee, in accepting the claims of privilege of Raddock and Sawochka and evidencing its intent to do the same in petitioner's case (if he chose to exercise his privilege), went further in protecting the witnesses' rights than it was required to go under the decisions of this Court—as petitioner comes close to acknowledging (Br. 49-50). Petitioner now asks the Court to reexamine the rule of those cases (Br. 50-60); he asks the Court, in other words, to hold in this case that the committee was *required* to do what it did in the case of Raddock and Sawochka and what

it indicated it was prepared to do in his own case, *i.e.*, honor a claim of privilege based on feared incrimination under state law. Obviously, however, it would be most inappropriate to adopt petitioner's suggestion. When a witness in a federal proceeding *claims* his privilege against self-incrimination (in a case presenting this issue of federalism) *and the claim is rejected*, it will be time enough for the Court to reconsider the rule of the *Hale* and *Murdock* cases. One who has been at pains to disclaim the privilege against self-incrimination has no standing to challenge a rule which limits its scope. Moreover, petitioner would not be helped in any way by a ruling here that the committee was required to do that which it was ready to do voluntarily if petitioner requested.

V

A WITNESS BEFORE A CONGRESSIONAL COMMITTEE WHO HAS DELIBERATELY AND REPEATEDLY DISCLAIMED RELIANCE UPON THE PRIVILEGE AGAINST SELF-INCRIMINATION MAY NOT INSIST UPON ITS PROTECTION UNDER ANOTHER NAME

What petitioner, in essence, sought from the committee—as the district court recognized (see *supra*, pp. 22-23)—was to be granted the protection of the privilege against self-incrimination without invoking it. We submit that the district court was clearly correct in holding that the law recognizes no such equivocal right on the part of a witness before a congressional committee.²² It is true, of course, that “a claim

²² Petitioner argues (and we agree) that he had a right to rely, in his appearance before the committee, on any privilege

of the privilege does not require any special combination of words. Plainly a witness need not have the skill of a lawyer to invoke the protection of the Self-Incrimination Clause." *Quinn v. United States*, 349 U.S. 155, 162. But it is equally true that a witness who would avail himself of the benefits of the privilege must claim it—"in language that a committee may reasonably be expected to understand as an attempt to invoke" it. *Emspak v. United States*, 349 U.S. 190, 194. Certainly it has never been suggested that one who *disclaims* the privilege is entitled to its protection. Having for personal reasons deliberately and repeatedly disclaimed reliance on the privilege against self-incrimination, petitioner cannot now be heard

available to him under the law and that he was not limited to pleading his privilege against self-incrimination (Br. 76-84). The district court did not hold otherwise. Judge Morris did not say that the only privilege which a witness can properly invoke as a reason for not answering a committee question is the privilege against self-incrimination. What he indicated was that where it is apparent from the circumstances that what a witness is in substance seeking is to be relieved from the necessity of giving self-incriminating testimony he must invoke his Fifth Amendment privilege, and may not secure the relief for which that privilege is designed by invoking some other privilege or supposed privilege, protecting other interests. That this was all that the judge meant is confirmed by his statement that "[t]he Sacher case" was "absolutely dispositive of what is involved in this case" (R. 174). There can be no doubt that the "Sacher case" to which the court referred was *Sacher v. United States*, 252 F. 2d 828 (C.A. D.C.), reversed on other grounds, 356 U.S. 576. The decision (see *infra*, p. 36, and note 9, *supra*, pp. 22-23) held that a witness who wishes to shield himself from supplying incriminating information must invoke his Fifth Amendment privilege. As we argue in the text, the decision was clearly correct, and we know of no case which has ever suggested the contrary.

to complain that the committee should not have required answers to its questions because they might have tended to incriminate him.

In *Sacher v. United States*, 252 F. 2d 828, 837 (C.A.D.C.), reversed on other grounds, 353 U.S. 576, the court of appeals struck down an attempt by another witness before a congressional committee to secure the benefits of the Fifth Amendment without invoking it. There the witness had attempted to make the First Amendment do service for the Fifth. "The Fifth Amendment," the court held (at 837)—

plainly—and properly—was intended as a shield against self-incrimination; the First Amendment was not. The use of the First Amendment to shield one from supplying "obviously incriminating information about himself" would be a perversion of the Constitution, needless so long as the Fifth Amendment stands. . . .

Petitioner has in effect attempted to make the Due Process Clause of the Fifth Amendment do service for the Self-Incrimination Clause. This, we submit, was equally a perverse use of the Constitution, which likewise ought not be permitted to succeed.

Stripped of exaggeration, what petitioner's argument comes to is that a witness before a congressional committee who would avail himself of the protection of the privilege against self-incrimination may do so in either of two ways. He may claim the privilege forthrightly and in unambiguous terms. Or he may, while disclaiming the privilege, seek its benefits under another name and in a different guise. We submit that the bare statement of the proposition contains its

own refutation. The Constitution does not give a privilege against self-incrimination, for the use of those who are willing to claim it candidly, and, in addition, a parallel privilege for the use of those whose only legitimate ground for refusing to answer relevant and proper questions is the fear of self-incrimination but who for personal reasons are unwilling to claim the appropriate privilege. The introduction of such a doctrine into the law would make the proper limitations on the use of the privilege against self-incrimination undesirably vague and lead to endless confusion. The privilege against self-incrimination is a specific guaranty of civil liberty, free of the need for applying such general tests as characterize decision under the Fourteenth Amendment or the Due Process Clause of the Fifth Amendment (*e.g.*, "ordered liberty"). To create a vaguely parallel privilege, of undefined scope, which a witness could claim by invoking "due process" or similar general concepts, would confuse and dilute the specific guaranty.

Nor would the introduction of such a principle into the law serve any useful purpose. We have shown that every legitimate protection to which petitioner was entitled was available to him under the privilege against self-incrimination, and that his claim that he would have been prejudiced if he had asserted the privilege is groundless. It is not unfair to require a witness in such a situation to forego equivocation and either claim or not claim his privilege. Where his statements are contradictory, yet he fully understands his position, the committee is entitled to insist

that he take his stand on the Self-Incrimination Clause or disclaim reliance on it. As we have noted, *supra*, pp. 54-55, this Court has repeatedly held that the privilege is not automatic but must be claimed by the witness. If, like petitioner, the witness disclaims all reliance on the privilege, the committee can properly take him at his word.

CONCLUSION

For the foregoing reasons it is respectfully submitted that the judgment of the court of appeals should be affirmed.

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H.S.B.

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IN THE
Supreme Court of the United States
OCTOBER TERM, 1961

No. 46

MAURICE A. HUTCHESON, *Petitioner,*

v.

UNITED STATES OF AMERICA

On Writ of Certiorari to the United States Court of Appeals
for the District of Columbia Circuit

PETITIONER'S REPLY BRIEF

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—
PETITIONER'S REPLY BRIEF
—

The prosecution's brief appears to narrow the issues in this case to one, namely, an insistence that a Congressional committee, which is engaged in questioning a witness then under a State indictment as to matters admissible against him and harmful to him at the trial of that indictment, can force that witness to invoke the privilege against self-incrimination, in terms, under penalty of being jailed for contempt if, as here, he rests his refusal to answer on an asserted denial of due process of law.

Surely if, in the course of a criminal trial, the United States Attorney called the defendant to the stand in order to force him to refuse to answer, and the latter thereupon rested on a "denial of due process of law," expressly disclaiming any privilege against self-incrimination, a mistrial would be declared almost automatically. We submit that here, similarly, where the Committee commenced by reading an accusation against petitioner (R. 22-23), it cannot then force him, when he is called as a witness, to claim the privilege against self-incrimination, with the result that, when he objects on due process grounds, he must go to jail.

Normally, of course, doubts regarding the desirability or necessity of reply briefs should be resolved against filing. But since the prosecution's written arguments in this case improperly refer to matters outside the record; put forward numerous propositions that rest on significant omissions; base a strongly-pressed contention on admitted speculation; trivialize a fundamental constitutional right into a mere form of words; and then pointedly refuse to face up to the concept of Federalism in this field formulated by Chief Justice Marshall, we are constrained to believe that some clarifying words by way of answer will prove helpful rather than merely burdensome.

I. THE PROSECUTION'S BRIEF IMPROPERLY REFERS TO MATTERS NOT IN THE RECORD.

In three particulars, the prosecution's brief refers to and hence presumably relies upon matters outside the record of trial, in violation of the rule that "We must take the case as it is presented here upon the stipulated return to the writ of certiorari on the record as presented to the Circuit Court of Appeals." *McClellan v. Carland*, 217 U.S. 268, 283.

1. Only a few pages of Government Exhibit 6, the Committee's Second Interim Report (Sen. Rep. No. 621, Part 2, 86th Cong., 1st sess.) were admitted at the trial, namely, pp. 517-518, 518-519, 554-561, 590-592. See Pet. Br. 24 and note 4, where complete and detailed record references are set out.

At U.S. Br. 8, note 2, however, there are references to pages of that Report not in evidence, viz., pp. 533-550.

In view of the circumstance that the pages to be admitted were settled by stipulation at the trial (R. 169-173), there is manifestly no justification for violating that agreement now.

2. At U.S. Br. 11, note 4, there is a reference to some hearings before a Subcommittee of the Senate Committee on Public Works, the so-called Gore Committee, at which it is said that petitioner testified.

Since any events before the the Gore Committee were mentioned at the present Labor-Management Committee hearings only as "background information, not as testimony" (R. 21), with a later reiteration (R. 23), "That is not evidence, but it is information;" and since the proceedings of the Gore Committee were not introduced into evidence at the trial now under review, they plainly do not belong in any brief filed on appeal.

3. At U.S. Br. 20-21, note 8, there are citations to newspaper articles that referred to the AFL-CIO Code of Ethics, and then to that Code itself.

The Code was mentioned once at the hearings in general terms (R. 146-147), but neither the document itself nor anything relating thereto was either offered or received in evidence at the trial. No doubt the Assistant United States Attorney there, experienced as he was in the prosecution of contempt-of-Congress cases, did not consider such material either relevant or necessary. Even if he was wrong,

however, omissions in his presentation cannot properly be supplied now, at the second stage of appellate review.

Plainly, none of these references are within the realm of judicial notice, any more than petitioner could have been convicted below simply on judicial notice of his testimony before the Labor-Management Committee.

In *Lawn v. United States*, 355 U.S. 339, 354, this Court, less than four years ago, granted a motion to strike the references in a Government brief to matter not included in the record of that case, thus reaffirming in emphatic fashion a settled rule of appellate procedure. We will not trouble the Court with a similar motion here. But, now that the impropriety of this practice of attempting to pretty up a record after the grant of certiorari has been so recently emphasized, only to be once more repeated here, we respectfully urge that it be again discountenanced.

II. NUMEROUS PROSECUTION ARGUMENTS REST ON SIGNIFICANT OMISSIONS.

A. The prosecution's contention that the Committee's inquiry furthered a valid legislative purpose omits to mention the Chairman's statement of purpose and moreover misreads the authorizing resolution.

1. When the Committee Chairman, called as a prosecution witness at petitioner's trial, was asked to state the Committee's objectives, he answered (R. 165),

"Our legislative purpose is to search out and find if crime has been committed."

Nowhere in the prosecution's arguments on the legitimacy of the Committee's legislative purposes (U.S. Br. 33-39, Point I) is the foregoing sworn testimony mentioned.

2. We have said (Pet. Br. 70-76, Point II) that, since the Committee's charter (R. 176, 179) directed it to ascertain whether "criminal . . . practices or activities are,

or have been, engaged in," it was exercising functions reserved exclusively to the Executive and the Judiciary, as it is no part of a Legislature's functions to ascertain whether crime, i.e., the violation of existing criminal laws, has been committed. Here, unlike the situations considered in *Barenblatt v. United States*, 360 U.S. 109, and in *Wilkinson v. United States*, 365 U.S. 399, the remarks of Committee members or of its Chairman are not relied on to add a purpose not set forth in the authorizing resolution. Here the Chairman's testimony is consistent with, and consistent only with, the Senate's direction to ascertain whether crimes had been committed. There is no question here of probing into motives, but only a matter of ascertaining, from a highly authoritative source,* the expressed scope and purpose of the inquiry.

3. We do not question, we never have questioned, we could not question, the power of Congress to investigate in order to determine whether legislation is necessary. But no such purpose is served by the portion of the authorizing resolution that we are now calling into question, the direction to ascertain whether "criminal . . . practices or activities are, or have been, engaged in." Such an inquiry is, very plainly, limited to violations of existing law.

The distinction is one of substance. If merely "improper" practices are or have been engaged in, a purely subjective characterization in no sense limited, then Congress can legislate to make those improper practices criminal for the future. But suppose a Congressional committee finds that actual crimes have been committed, that an existing provision of criminal law has been violated; what legislation can it then enact? An act declaring the persons involved guilty? That would be a prohibited bill of attainder. Const., Art. I, Sec. 9, cl. 3. And, if the matter inquired about is one in respect of which no valid legisla-

* Cf. *United States v. Presser*, 292 F. 2d 171 (C.A. 6), pending on writ of certiorari, No. 278, this Term.

tion can be enacted, the inquiry is not one for a legitimate legislative purpose. *McGrain v. Daugherty*, 273 U.S. 135, 171; *Kilbourn v. Thompson*, 103 U.S. 168, 194.

4. Most of the resolutions involved in the cases cited at U.S. Br. 34—the Department of Justice Investigation resolution (*McGrain v. Daugherty*, 273 U.S. 135, 151-152), the Teapot Dome resolution (*Sinclair v. United States*, 279 U.S. 263, 287-288), the House Un-American Activities resolution (*Watkins v. United States*, 354 U.S. 178, 201-202)—did not even resemble the resolution here in question (R. 176-180). None of those just cited directed the legislative committee concerned to ascertain whether crimes—i.e., violations of existing law—had been committed.

Possibly it could be argued that parts of the resolution constituting the Kefauver Committee went that far.¹ But in the only case that sustained any portion of a conviction for contempt of the Kefauver Committee, the legality of that Committee's creation was not contested (*United States v. Costello*, 198 F. 2d 200, 202 (C.A. 2), certiorari denied, 344 U.S. 874), and in another, where the entire con-

¹ S. Res. 202, 81st Cong., 2d sess. The resolution actually adopted originated as an amendment in the nature of a substitute presented by Senator Kefauver (96 Cong. Rec. 6148-6149, 6245, 6246); it is quoted in *Marcello v. United States*, 196 F. 2d 437, 438-439 (C.A. 5). For the convenience of the Court we set forth its operative portions as they appear at 96 Cong. Rec. 6149:

"That a special committee . . . is authorized and directed to make a full and complete study and investigation of whether organized crime utilizes the facilities of interstate commerce or otherwise operates in interstate commerce in furtherance of any transactions which are in violation of the law of the United States or of the State in which the transactions occur, and, if so, the manner and extent to which, and the identity of the persons, firms, or corporations by which such utilization is being made, what facilities are being used, and whether or not organized crime utilizes such interstate facilities or otherwise operates in interstate commerce for the development of corrupting influences in violation of law of the United States or of the laws of any State: . . ."

viction was emphatically reversed (see quotation at Pet. Br. 48-49), the point we make under the present heading seems not to have been presented. *Aiuppa v. United States*, 201 F. 2d 287, 289 (C.A. 5). In any event, the practices followed by the Kefauver Committee, as reflected in the reversals visited upon virtually all the convictions of persons cited for contempts before it, are hardly a safe guide to constitutional limitations upon the scope and procedures of Congressional investigating committees. See *Poretto v. United States*, 196 F. 2d 392 (C.A. 5); *Marcello v. United States*, 196 F. 2d 437 (C.A. 5); *United States v. Costello*, *supra* (in part); *Aiuppa v. United States*, *supra*; *United States v. Doto*, 205 F. 2d 416 (C.A. 2).

What we are specifically concerned with here is a resolution directing a committee of Congress to parallel the activities of grand juries, United States Attorneys, and the F.B.I. in order to ascertain whether (R. 176, 179) "criminal . . . practices or activities are, or have been, engaged in."

We do not suggest for a moment that a congressional committee must bring its investigative activities to a grinding halt simply because, in the course of pursuing legitimate legislative inquiries, it incidentally discovers that crimes have been committed. *McGrain v. Daugherty*, 273 U.S. 135, 179-180. We simply say that, where an avowed purpose of a legislative inquiry, as here, is to find whether criminal activities have been carried on, such an investigation does not have legitimate legislative ends. Accordingly, anyone sought to be punished for obstructing the illegal Congressional purpose must go free, even though in other respects the committee's inquiry was perfectly proper. Cf. *United States v. Rumely*, 345 U.S. 41.

5. We have shown (Pet. Br. 70-73) that the Committee frankly and openly declared that its purpose was exposure, and (Pet. Br. 73-74) that its Second Interim Report demonstrated that it did not need petitioner's answers for any

fact-finding purpose. But, says the prosecution (U.S. Br. 39), this argument "overlooks the fact that the committee had sought to ascertain the nature of the connection of the Teamsters Union with the 'fix' about which it was inquiring, and that its efforts in this respect were largely frustrated by petitioner's and other witnesses' refusal to testify."

But the relevant portions of that Report, quoted at Pet. Br. 24-26, show precisely the contrary; the Committee made very specific findings as to the alleged connection of the Teamsters Union with the so-called "fix." Here again, the Committee found all the facts that it wanted to find without the testimony of the witnesses questioned as to that matter who refused to answer on grounds of self-incrimination, as well as without petitioner's testimony, whose refusal to answer was rested on a denial of due process. No one who reads objectively the excerpts from the Report already quoted (Pet. Br. 24-26) can fairly discover therein the slightest failure on the part of the Committee to pinpoint Teamster participation in the Lake County matter.

Moreover, since the prosecution also argues (U.S. Br. 52-53, 54) that the Committee would have been prepared to honor a claim of privilege by petitioner had he made one, it is plain in still another aspect that the Committee was not interested in fact-finding nearly as much as it was in insisting that petitioner claim the privilege against self-incrimination in terms, with all the penalties and disadvantages thereunto appertaining.

If, therefore, the Committee's efforts were in any sense "frustrated" (U.S. Br. 39), it was only because, since petitioner refused to invoke the privilege against self-incrimination, it could not by reason of such invocation assert, as it did in respect of other witnesses (see Pet. Br. 10-13, 82-83), that by claiming that privilege he had admitted his guilt.

The prosecution argues (U.S. Br. 38) that "A congressional committee must be its own judge of the amount of evidence needed to enable it to discharge its legislative responsibilities and report back to its parent body with findings and recommendations. It would be inappropriate for the judicial branch to undertake to review the exercise of so peculiarly discretionary a determination."

That argument is entirely irrelevant, for the reason that here the question concerns, not abstract legislative determinations, but a prosecution for contempt of Congress in the courts of the United States. If petitioner goes to jail it will be in consequence of judicial action. Therefore, since the issue is whether he has in fact been guilty of improperly refusing to answer, it is not only appropriate, it is necessary, cf. *Deutch v. United States*, 367 U.S. 456, 471-472, to ascertain whether Congress was engaged in proper fact-finding, a process which petitioner is alleged to have frustrated, or whether it was instead pursuing an improper and non-legislative purpose, interference with which could carry no sanctions. *McGrain v. Daugherty*, 273 U.S. 135, 171; *Kilbourn v. Thompson*, 103 U.S. 168, 194. The fact that the inquiry may enter on a delicate area is of course no reason for not making it in the course of reviewing a conviction for crime. *United States v. Rumely*, 345 U.S. 41. Just as, when "the construction to be given the [Senate] rules affects persons other than members of the Senate, the question presented is of necessity a judicial one," *United States v. Smith*, 286 U.S. 6, 33, so here, where an individual's liberty turns on the legitimacy or otherwise of a legislative purpose, the courts not only can but must make the necessary inquiry.

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B. The prosecution's contention that the inquiries regarding petitioner's alleged Lake County activities were unrelated to the subject-matter of his pending Marion County indictment not only ignores both the law and the facts but also omits to mention that petitioner's counsel before the Committee repeatedly but vainly called attention to the connection between the two.

Before the Committee, Mr. Travis, who appeared both for petitioner (R. 90) and for his co-defendant Blaier (R. 76-77), repeatedly advised the Chairman that the questions being asked about the alleged Lake County activities bore upon and were related to the subject-matter of the pending Marion County indictment (R. 78, 81-82, 84, 86, 91-92, 96, 125, 128, 132-134). See also R. 93-94, where petitioner was temporarily represented by other counsel. But the Chairman, another member, and the Committee's Counsel all insisted that the two were unrelated (R. 81-82, 84-85, 86, 128-129, 132-135).

If, as Committee Counsel first asserted (R. 21-23), as the Chairman later declared (R. 153), and as the Committee ultimately found in its Second Interim Report (p. 592, quoted at Pet. Br. 26), petitioner "fixed" the Lake County indictment in 1957, then, under Indiana law, see cases cited at Pet. Br. 37-38, evidence to that effect would have been admissible at the trial of the Marion County indictment (R. 182-189) alleging conspiracy and bribery in 1956.

The prosecution grudgingly concedes as much, saying (U.S. Br. 40-41),

"It may well be—we do not dispute the point—that if petitioner, in response to the committee's question, had admitted using funds of the Carpenters Union to bribe the Lake County prosecutor to halt the investigation, his admission would have been admissible at the Marion County trial as evidence of consciousness of guilt (i.e., of the 'land deal' charges which the Lake County grand jury had under investigation)."

And yet the prosecution also says (U.S. Br. 40): "That [Lake County] grand jury investigation, it is true, involved an inquiry into charges relating to the highway matter which became the subject of the Marion County indictment, but otherwise *the committee's inquiry was totally unrelated to the latter affair.*" We have added the italics, out of sheer amazement. Because, plainly, once it is conceded, as it must be and as it has been, that evidence of the Lake County transactions is admissible at the trial of the Marion County indictment, the relationship between the two is irrevocably established.

Moreover, at no point in the prosecution's argument, with the possible exception of footnote 14 at U.S. Br. 40, is there any reference to the long and ultimately unsuccessful effort of counsel for petitioner and Blaier to demonstrate to the Committee the connection between the two proceedings. The account at U.S. Br. 45-46 (Par. "1") falls far short of apprising the reader of what petitioner's counsel actually said.

C. The prosecution's contention, that petitioner is groundlessly asserting prejudice had he invoked the privilege against self-incrimination, rests on a complete misconception of *Slochower v. Board of Education*, 350 U.S. 551.

We argued (Pet. Br. 39-41) that, had petitioner invoked the privilege against self-incrimination, that fact would have circumscribed his freedom of action at the trial of his pending Indiana indictment, since under Indiana law an earlier claim of self-incrimination can be the subject of an adverse inference if the witness thereafter elects to take the stand; and we cited *Adamson v. California*, 332 U.S. 46, and *Twining v. New Jersey*, 211 U.S. 78, for the proposition that such an adverse inference at a trial in the Indiana courts would not violate the Fourteenth Amendment.

The prosecution does not, no doubt because it cannot, challenge our reading of the Indiana law (U.S. Br. 47-48);

see *Crickmore v. State*, 213 Ind. 586, 592-593, 12 N.E. 2d 266, 269:

"Appellant testified as a witness. On cross-examination he was asked if it was not a fact that in the trial of Peats he took the witness stand, but refused to answer a question upon the ground that it might incriminate him. There was an objection by appellant, which was overruled by the court. The witness answered: 'No, I don't think I said that.' The prosecuting attorney referred to the fact in argument. Appellant contends that the state is not permitted to sully or prejudice his defense or character by referring to his refusal to testify; and it is contended that the statement of the prosecuting attorney, commenting upon the fact that appellant had refused to testify in the other case, was misconduct and prejudicial. But there is no validity in this argument. If the defendant had not tendered himself as a witness, it would have been improper to comment upon his refusal to testify in this case, or in any other case, but, since he tendered himself as a witness, it was proper to cross-examine him as fully as any other witness. By becoming a witness, he waived his right not to be required to give evidence against himself."

Now, plainly, this does not go nearly as far as *Adamson* or *Twining*, because in those cases it was held proper to comment on the defendant's refusal to testify. But the prosecution argues that no such inference can properly be drawn because of *Slochower v. Board of Education*, 350 U.S. 551. "For," says the prosecution (U.S. Br. 48),

"the precise holding of *Slochower* was that it is fundamentally unfair, and hence violative of due process, for a state to draw or permit the drawing of just such an adverse inference as Indiana permitted to be drawn in the *Crickmore* case from the invocation before a federal tribunal or agency of one's constitutional privilege under the Fifth Amendment not to be a witness against oneself."

We do not thus read *Slochower*, and we doubt whether anyone else would. What that case held was that it was

violative of due process automatically to dismiss, without even an opportunity for explanation, a State teacher who had invoked the Federal privilege against self-incrimination, because to permit such action would be transforming the privilege into a plea of guilty, and hence be plainly unreasonable. The present point could not arise in *Slochower*, since the person who had earlier invoked the privilege there never had an opportunity to be a witness later on. Thus the *Slochower* case would be in point here only if it were law in Indiana that an invocation of the Federal privilege against self-incrimination, earlier made by one who later was tried as a defendant in a State criminal proceeding, necessarily amounted to a plea of guilty at the later trial.

Of course that is not the law of Indiana. Nor is it law in Indiana that the failure of the defendant to take the stand in his own behalf can be made the subject of comment, although the *Adamson* and *Twining* cases do permit such a course. All that Indiana says is that, if a defendant takes the stand, the fact that he has earlier claimed his privilege can be shown and used against him. Since, notwithstanding *Slochower*, this Court still regards *Adamson* and *Twining* as law, see *Cohen v. Hurley*, 366 U.S. 117 at 128-129, we are unable to find any infirmity in Indiana's *Crickmore* rule, which is so much more tender to defendants than California's *Adamson* doctrine or New Jersey's *Twining* principle.

Nor is there more merit in the prosecution's suggestion (U.S. Br. 50-51) that the unfairness in this situation arises not from the dilemma into which the Committee placed petitioner, but from the *Crickmore* rule; that any resultant unfairness is attributable, not to the Committee, but to the Indiana courts; that petitioner's proper course is to seek review here of the Indiana ruling; and that (U.S. Br. 51) "The federal government cannot be required to stay its hand because in a subsequent State proceeding the State

might conceivably fail to meet its constitutional obligations."

There are, of course, several answers to this exercise in non-causal causation: But it seems sufficient to remark at this juncture that, as the Fourteenth Amendment now stands, it is not violated by the application of Indiana's *Crickmore* rule.

III. THE PROSECUTION'S ARGUMENT THAT THE COMMITTEE WOULD HAVE PERMITTED HIM TO INVOKE HIS FEDERAL PRIVILEGE AGAINST SELF-INCRIMINATION IN RESPECT OF HIS IMPENDING STATE TRIAL RESTS ON SPECULATION, AND DOUBTFUL SPECULATION AT THAT.

The prosecution argues (U.S. Br. 52-53):

"There cannot be the slightest doubt, then, that the committee would have honored a claim of privilege by petitioner as to any aspect of this subject of inquiry [i.e., the Lake County matter], and that petitioner was well aware of that fact."

And again (U.S. Br. 53-54) there is mention of

"what [the committee] indicated it was prepared to do in [petitioner's] own case, i.e., honor a claim of privilege based on feared incrimination under state law."

It goes without saying that it is speculative in the extreme to talk about what the Committee might have done in petitioner's case if he had invoked a privilege that in fact he repeatedly disclaimed, simply because the Committee allowed other witnesses to assert the claim that petitioner himself refused to assert.

Moreover, the record plainly shows that this kind of speculation would have been unsafe, inasmuch as the Committee treated petitioner quite differently than it did his co-defendant Blaier.

1. The first witness, Raddock, invoked the privilege against self-incrimination with the formula, "On the advice of counsel I refuse to answer the question on the ground that it may [or, "to do so might"] tend to make me a witness against myself." (R. 18, 19, 20, 21, 24, 25, 28, 29, 30, 31, 32, 33).

2. The next witness, Sawochka, employed the expression "On the advice of counsel, I respectfully decline to answer the question and exercise my privilege under the fifth amendment of the United States Constitution not to be a witness against myself" (R. 48, 49, 50, 51, 52).

3. Johnson, called next, said "On the advice of my counsel, sir, I decline to answer the question upon the ground my answer might tend to incriminate me" (R. 55).

4. Sullivan, as we have pointed out (Pet. Br. 13-14), invoked the attorney-client privilege (R. 56-76).

5. Next came Blaier, a co-defendant with petitioner in the pending Marion County indictment; his ground for refusal to answer (R. 82, 83-84, 86) was "that it relates solely to a personal matter not pertinent to any activity which this committee is authorized to investigate, and also because it might aid the prosecution in the case in which I am under indictment."

In view of the obvious difference between Blaier's grounds and those asserted by Raddock, Sawochka, and Johnson, we are unable to understand how (U.S. Br. 13, note 6) the Committee—or anyone else, for that matter—could possibly have "thought Blaier intended by this statement to invoke the privilege against self-incrimination." At any rate, he was not ordered to answer, and was never cited for contempt.

If, then, the prosecution is right in contending (U.S. Br. 52-54) that the Committee would have treated petitioner as it treated the other witnesses, then, we submit, he had

every right to assume that his own later refusal (R. 121-122, 123, 124-125)—

"on the ground that it relates solely to a personal matter, not pertinent to any activity which this committee is authorized to investigate, and also it relates or might be claimed to relate to or aid the prosecution in the case in which I am under indictment, and thus be in denial of due process of law—

would be treated precisely as Blaier's was. In fact, however, his refusal was treated very differently.

Whether it was petitioner's addition, to Blaier's formula, of the words "and thus be in denial of due process of law," that prompted the Committee to order petitioner to answer when it had not given similar directions to Blaier; whether it was the fact that petitioner was General President of the union while Blaier was only its Second General Vice-President that underlay the difference in the Committee's actions in the two cases, the record does not show. But it is precisely this difference in treatment that underscores the unsoundness of the prosecution's strongly pressed speculative argument as to what the Committee might have done if petitioner had followed a course different from the one he actually took.

IV. IT IS A VIOLATION OF DUE PROCESS OF LAW FOR A LEGISLATIVE COMMITTEE TO PRETRY A CRIMINAL CASE AS THE COMMITTEE DID HERE BY REQUIRING A WITNESS THEN UNDER INDICTMENT TO TESTIFY REGARDING MATTERS ADMISSIBLE AGAINST HIM AT THE TRIAL OF THAT INDICTMENT.

The prosecution says (U.S. Br. 40), referring to our argument at Pet. Br. 41-47, that "It distorts the record to say that the committee attempted to 'pretry a pending criminal case.' "

Any distortion arises from the prosecution's stubborn insistence (U.S. Br. 40) that the Committee's inquiry into

the alleged Lake County transactions was "totally unrelated" to the pending Marion County indictment that had been returned against petitioner before he was called as a witness. Inasmuch as the prosecution now admits (U.S. Br. 40-41) what we have always urged (Pet. Br. 35-39) and what indeed petitioner's counsel vainly tried to tell the Committee, namely, that evidence concerning the Lake County transactions would be admissible at the trial of the Marion County indictment (*supra*, p. 10), it is plain that the two sets of transactions were in fact very closely related, and that accordingly the Committee was pretrying a criminal case. If there is any distortion here, it is not of petitioner's making.

We argued also (Pet. Br. 46-47) that the prosecution was demonstrably wrong (Br. Op. 8, 9) in putting forward *Sinclair v. United States*, 279 U.S. 263, for the proposition that "a congressional committee can investigate matters which relate to pending criminal cases," inasmuch as the *Sinclair* case involved only a pending civil action.

Now the prosecution admits its error (U.S. Br. 42-43), saying that "While the pending suit in that case was a civil action, as petitioner observes (Br. 46, 47), it is evident that the action had unmistakable criminal overtones; application had already been made for a special grand jury."

We must confess our inability to understand how the collateral impanelling of a grand jury can change the quality of a pending civil action, or to recognize any such *tertium quid* as a civil action with unmistakable criminal overtones. Is that expression designed to describe a civil action in which, if judgment goes for the plaintiff, the defendant must not only pay damages but go to jail as well? If that is what the prosecution means, we can only say that we have been unable to find any such hybrid in the books.

This is not a matter of labels, but of substance, and the prosecution's assertion (U.S. Br. 43) that "the rationale of the [*Sinclair*] decision applies to a situation in which the pending action is a criminal prosecution" breaks down on just that substance:

The defendant in a civil action can be compelled to testify as an adverse witness, at the trial (Rule 43(b), F.R. Civ. P.), or in advance of trial, on depositions (Rule 26(a)) or interrogatories (Rule 33). No unfairness, accordingly, results when his testimony is first elicited at a Congressional hearing, subject of course to the qualification (*Sinclair*, 279 U.S. at 295) that "Congress is without authority to compel disclosures for the purpose of aiding the prosecution of pending suits; * * *."

The defendant in a criminal prosecution, however, can not be compelled to testify.

It is because of that basic and fundamental distinction that the rationale of the *Sinclair* case, which involved a pending civil suit, is demonstrably inapplicable to a pending criminal prosecution.

The prosecution urges (U.S. Br. 43-44) that "The Supremacy Clause * * * is inconsistent with the notion that a committee of Congress * * * can be frustrated in its investigation by the fact that the information it seeks may happen also to be relevant to charges made in a pending state indictment."

We shall deal with the Supremacy Clause below. At this juncture we content ourselves with pointing out that Congress, to avoid just this frustration, declared for 97 years, from 1857 to 1954, that no testimony given before one of its committees "shall be used as evidence in any criminal prosecution in any court" against the person giving it. Sec. 2 of the Act of Jan. 24, 1857, c. 19, 11 Stat. 155, 156; Act of Jan. 24, 1862, c. 11, 12 Stat. 333; R.S. § 859; 28 U.S.C. (1926 to 1946 eds.) § 634; 18 U.S.C. (1952 ed.)

§ 3486; *Adams v. Maryland*, 347 U.S. 179; Sec. 1 of the Act of Aug. 20, 1954, c. 769, 68 Stat. 745.

The way to enlarge the areas into which Congressional committees may properly inquire is to restore 18 U.S.C. (1958 ed.) § 3486 to its pre-1954 version, not to consign to a Federal prison a witness who resisted a Congressional committee's efforts to strengthen the possibility that he would be lodged in a State prison.

V. THE PROSECUTION'S CONTENTIONS HERE TRIVIALIZE A BASIC CONSTITUTIONAL RIGHT INTO A MERE FORM OF WORDS.

The prosecution here does not rest its position on any basic principle of Federalism, real or supposed. It does not argue that the rule of *United States v. Murdock*, 284 U.S. 141, permitted the Committee to interrogate petitioner at will concerning the precise subject-matter of his pending Indiana indictment, as well as about any other matters that would have been admissible against him and harmful to him at the trial of that indictment. It does not discuss, let alone cite, the earlier contrary holding by Chief Justice Marshall in *United States v. Saline Bank*, 1 Pet. 100, which petitioner has been at such pains to disentangle from subsequent misconceptions of its scope (Pet. Br. 56-60, 86-90). Rather, the prosecution asserts that, since it is to be supposed that the Committee would have permitted petitioner to refuse to answer had he claimed a privilege against self-incrimination in the form in which Raddock, Sawochka, and Johnson were permitted to claim it (*supra*, page 15), and since petitioner expressly disclaimed reliance on any privilege against self-incrimination (R. 125, 127, 130, 135, 146), then, since he rested his refusal only on a "denial of due process of law" (R. 122, 123, 125) on the ground that the question "reaches into the area of a question under which I am indicted" (R. 128), he is in contempt of Congress.

We submit that this approach trivializes into a form of words a basic constitutional guaranty of individual liberty, and moreover involves just precisely the "ritualistic formula or talismanic phrase" that was held in *Emspak v. United States*, 349 U.S. 190, 194, to be wholly unnecessary.

We suggest that petitioner's rights must be based, not on the legal tags he attached to his reasons for refusal, but on the factual grounds he gave, namely, that each of the unanswered questions "relates or might be claimed to relate to or aid the prosecution of the case in which I am under indictment" (R. 122, 123, 125), that the question "reaches into the area of a question under which I am indicted" (R. 128), that "it does reach into the matter under which I am indicted" (R. 128).

The prosecution argues that what petitioner sought (U.S. Br. 54) "was to be granted the protection of the privilege against self-incrimination without invoking it," that (U.S. Br. 56)—

"what petitioner's argument comes to is that a witness before a congressional committee who would avail himself of the protection of the privilege against self-incrimination may do so in either of two ways. He may claim the privilege forthrightly and in unambiguous terms. Or he may, while disclaiming the privilege, seek its benefits under another name and in a different guise."

This amounts to saying that petitioner, already under a State indictment, was bound and limited by the specific invocation of the privilege against self-incrimination, even though by doing so he exposed himself to three separate and distinct penalties:

First, since any claim of the privilege against self-incrimination could constitutionally have resulted in an adverse inference had he elected to testify at the trial of the pending indictment, *Crickmore v. State*, 213 Ind. 586, 12

N.E. 2d 266, and discussion *supra*, pp. 11-14, the making of such a claim would, at the very least, have limited his freedom of action at that trial.

Second, to have made such a claim of privilege would have raised a problem concerning his future employment in view of the AFL-CIO ethical code (R. 146-147), regardless of the precise terms of that code, which are not in this record.

Third, to have made such a claim of privilege would, in the expressed views of the Committee Chairman (R. 19-20, 23-24, 24-25, 31-32, 38-39, quoted at Pet. Br. 10-13; and R. 32-33, quoted at Pet. Br. 82-83) as well as in the Committee's Second Interim Report (Sen. Rep. No. 621, Part 2, 86th Cong., 1st sess. [Govt. Ex. 6, R. 161-162, 170], at pp. 554-556, 592), have been tantamount to a confession of guilt.

The prosecution argues (U.S. Br. 57) that "The Constitution does not give a privilege against self-incrimination, for the use of those who are willing to claim it candidly, and, in addition, a parallel privilege for the use of those whose only legitimate ground for refusing to answer relevant and proper questions is the fear of self-incrimination but who for personal reasons are unwilling to claim the appropriate privilege."

Passing the obvious question-begging as to the propriety of the questions asked, the foregoing assertion explains very clearly why we say that, on the prosecution's view, this case involves the power of a Congressional committee to force a witness under indictment to claim a privilege against self-incrimination, regardless of the penalties that such a claim may involve. That is why we go on to show that to force such a choice—such a dilemma, actually—on an already indicted witness involves a denial of due process of law, which this petitioner has standing to invoke.

VI PETITIONER HAS STANDING TO INVOKE UNDER THE DUE PROCESS CLAUSE THE CONCEPT OF FEDERALISM FORMULATED BY CHIEF JUSTICE MARSHALL.

The prosecution admits (U.S. Br. 54-55, note 22) that petitioner "had a right to rely, in his appearance before the committee, on any privilege available to him under the law and that he was not limited to pleading his privilege against self-incrimination." But, notwithstanding this footnoted concession, the prosecution argues at length, through two major points and more than six pages of text (U.S. Br. 52-58, Points IV and V), that he had no standing either to rely on his asserted "denial of due process of law" (R. 122, 123, 125) or to challenge the rule of *United States v. Murdock*, 284 U.S. 141, this because he expressly disclaimed specific reliance on the privilege against self-incrimination. Thus the prosecution effectively withdraws its concession, and supports the contrary ruling of the district judge (R. 174) that

"the relief that this defendant ought to have gotten before the Committee of Congress was his claim under the immunity clause of the Fifth Amendment. He did not seek it and it is the only way he could properly seek it, before a Committee of Congress."

We think it too plain for argument that disclaimer of reliance on one clause of the Constitution does not amount to disclaimer of reliance on any other clause. Petitioner never disclaimed reliance on what he asserted to be "in denial of due process of law" (R. 122, 123, 125), he declared himself not qualified to say whether the due process clause included the privilege against self-incrimination (R. 130, 131), and his counsel was not asked to clarify that

* We note in passing that the prosecution argued below (U.S. Br. in C.A., pp. 26-27, Point IV) that "There was no error on the part of the Court in holding that the plea of self-incrimination was the only way appellant could properly seek relief from interrogation by the committee."

matter. And, specifically, petitioner never disclaimed the basic contention he presented to the Committee, namely, that to interrogate him in respect of anything that "relates or might be claimed to relate to or aid the prosecution in the case in which I am under indictment" would indeed "be in denial of due process of law" (R. 122, 123, 125).

That being so, he had standing to assert that for a Committee of Congress to require an indicted witness to invoke the privilege against self-incrimination where such invocation, as here, necessarily involves penalties and thus does not completely protect the witness, is in itself a violation of due process of law because essentially unfair.

Surely, then, he can argue without limitation or restriction the proposition he advances here, that what the Committee forced him to do *was* "in denial of due process of law," and that accordingly his conviction for contempt of Congress cannot be sustained. Cf. *Deutch v. United States*, 367 U.S. 456, 471.

Thus there is no occasion to consider whether, as the prosecution argues (U.S. Br. 57), "The privilege against self-incrimination is a specific guaranty of civil liberty, free of the need for applying such general tests as characterize decision under the Fourteenth Amendment or the Due Process Clause of the Fifth Amendment (e.g., 'ordered liberty')," or whether (*id.*) "To create a vaguely parallel privilege, of undefined scope, which a witness could claim by invoking 'due process' or similar general concepts, would confuse and dilute the specific guaranty."

Similarly, whether the First Amendment may do service for the Fifth (*Sacher v. United States*, 252 F. 2d 828, 837 (D.C. Cir.), reversed, 356 U.S. 576; see U.S. Br. 56) is not a matter in issue here. And whether the due process clause of the Fifth simply parallels the self-incrimination clause (U.S. Br. 56) is likewise not in issue, because here

there is involved the effort to make an indicted witness invoke the self-incrimination clause when such invocation involves penalties. To urge, as the prosecution does throughout, that petitioner was indeed so limited, to argue, as the prosecution does (U.S. Br. 56), that any other view is "a perverse use of the Constitution," seems to us an instance of "the littleness and the looseness of men's interpretation of the Constitution" against which James Bradley Thayer long ago warned. Thayer, *Legal Essays* (1908) 159.

We urge, instead, a return to the concepts in this field formulated by the Great Chief Justice, namely, "that a party is not bound to make any discovery which would expose him to penalties," *United States v. Saline Bank*, 1 Pet. 100, 104, even when the penalties are State penalties and the discovery is sought by a Federal tribunal. Here petitioner's explicit ground for refusal to answer was that each question (R. 122, 123, 125) "relates or might be claimed to relate to or aid the prosecution in the case in which I am under indictment."

It is well to repeat that the prosecution never once faces up to the *Saline Bank* case. Indeed, its studied refusal even to cite that decision seems to us the greatest compliment that could be paid our reading of that case's actual holding (Pet. Br. 56-60, 86-90). And certainly, when, as here, the questions to be decided concern both the Supremacy Clause (U.S. Br. 43) and the true principles of Federalism (Pet. Br. 34, 60-65), it would be well to turn for enlightenment to Chief Justice Marshall, whose notions of national power were conceived in the bloodied snows of Valley Forge (1 Beveridge, *The Life of John Marshall*, c. IV, pp. 108 *et seq.*) and first proclaimed in the Virginia Ratifying Convention (1 *id.*, cc. X-XII, pp. 357 *et seq.*), rather than to rely on those who bandy about asserted standards of constitutional interpretation unsupported by citation of authority (U.S. Br. 43-44, 56-58).

The prosecution points- (U.S. Br. 45) to the unanimity in *United States v. Murdock*, 284 U.S. 141, which we have urged be reconsidered (Pet. Br. 49-66). We submit that there is far more basis to reconsider *Murdock* than there was for the United States, in the recent case of *Lurk v. United States*, 366 U.S. 712, to seek the overruling of the similarly unanimous decisions in *Ex parte Bakelite Corp.*, 279 U.S. 438, and *Williams v. United States*, 289 U.S. 553. See U.S. Br., No. 669, Oct. T. 1960, at pp. 97-125.*

For in here asking reconsideration of *Murdock*, which rested on *Hale v. Henkel*, 201 U. S. 43, and on what was supposed to be English law, we showed that the English law was quite the other way, and that *Hale v. Henkel* had misconceived the true holding of *United States v. Saline Bank*, 1 Pet. 100. See Pet. Br. 49-65. We did not seek to reargue *Murdock* as an original proposition, as the United States in *Lurk* sought to reargue *Bakelite* and *Williams*.

Even in England, where *stare decisis* has become such an absolute that common law there now seems all but calcified, the courts are prepared to brush aside a decision made *per incuriam*, which is to say, where governing precedents have been overlooked through carelessness or neglect. See Sir Carleton Kemp Allen, *Law in the Making* (6th ed. 1958) 235-237, 240-243, 340-341.

That is why we have no hesitation in arguing for a return to the *Saline Bank* doctrine, and for a declaration that where, as here, an indicted witness before a Congressional committee will be subjected to penalties if he invokes the privilege against self-incrimination in order to avoid being interrogated on matters admissible against him and harmful to him at the trial of that indictment, where the information sought to be elicited "relates to or

*The latter issues are once more before the Court, in view of the granting of certiorari on November 9, 1961, in *Lurk v. United States*, No. 341, Misc. (now No. 481), and in *Glidden Co. v. Zdanok*, No. 242.

might be claimed to relate to or aid the prosecution in the case in which I am under indictment," such interrogation is indeed "in denial of due process of law" (R. 122, 123, 125).

CONCLUSION

For the foregoing additional reasons, it is respectfully submitted that the judgment below should be reversed, with directions to dismiss the indictment.

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Supreme Court of the United States

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No. 46

MAURICE A. HUTCHESON, *Petitioner.*

v.

UNITED STATES OF AMERICA

On Writ of Certiorari to the United States Court of Appeals
for the District of Columbia Circuit

PETITION FOR REHEARING

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**On Writ of Certiorari to the United States Court of Appeals
for the District of Columbia Circuit**

PETITION FOR REHEARING

Now comes **MAURICE A. HUTCHESON**, petitioner herein, and respectfully prays the Court to grant a rehearing, for the sole reason that the indictment herein is invalid in precisely the same respects as the indictments considered in *Russell v. United States*, No. 8, and related cases, decided May 21, 1962, and that accordingly Rule 12(b)(2) of the Federal Rules of

Criminal Procedure now requires this Court to enter a judgment of reversal in the present cause.

First. Exactly one week after the decision in the present contempt-of-Congress case, involving a violation of 2 U.S.C. § 192, this Court in a sextet of similar cases (*Russell v. United States*, No. 8, together with Nos. 9-12 and 128) ordered the latter convictions reversed because of the invalidity of the several indictments there considered, which did not identify the subject that was under inquiry by the cognizant Congressional committee at the time of each defendant's default or refusal to answer.

The identical deficiency appears in the present case.¹ As in *Russell*, the indictment here contains (R. 4) the generalized allegation that petitioner "was asked questions which were pertinent to the question then under inquiry." But, again as in *Russell*, the indictment here at no point (R. 4-7) identified in any way the subject that was under inquiry at the time of this petitioner's refusal to answer the 18 questions that were made the subject of the 18 counts on which he was and now stands convicted.

Second. It is true that the issue on which *Russell v. United States* and companion cases ultimately turned was not advanced in the present case, either in the District Court, or before the Court of Appeals, or before the Court (Pet. Cert. 2-3; Pet. Br. 2). But we think that in the present posture of the instant case this difference is not and should not be determinative.

¹ This identity indeed is duly noted in the dissenting opinion of Harlan and Clark, JJ., in the *Russell* case, p. 3 of slip opinion, note 2.

Rule 54(a)(1) of the Federal Rules of Criminal Procedure makes those Rules applicable here,² and Criminal Rule 12(b)(2) specifically provides that

“the failure of the indictment or information to charge an offense shall be noticed by the court at any time during the pendency of the proceeding.”

Here, since the judgment of this Court has not yet gone down to the court below, see Rules 59(2) and (3) of this Court, the present case is of course still pending here.

In compliance with the command of Rule 12(b)(2), F.R. Crim. P., courts of appeals have reversed convictions because of invalid indictments where no objection in that behalf was made in the district court, *United States v. Manuszak*, 234 F. 2d 421, 422 (C.A. 3), and also where the objection was first made by petition for rehearing following initial affirmance on appeal. *Hotch v. United States*, 208 F. 2d 244, 249 (C.A. 9), prosecution's subsequent petition for rehearing denied, 212 F. 2d 280.

Since, under the decision in *Russell v. United States*, the present indictment, which similarly did not allege the subject matter under inquiry at the time petitioner refused to answer, therefore in like manner did not charge an offense, this Court is bound, under the “shall be noticed” language of Rule 12(b)(2), F.R. Crim. P., to give effect in this case to its subsequently announced *Russell* decision.

Third. While we think that this result must follow under the terms of Criminal Rule 12(b)(2), the invalidity of the present indictment amounts in any

² “These rules apply to all criminal proceedings in the United States District Courts, * * *; in the United States Courts of Appeals; and in the Supreme Court of the United States; * * *.”

event to plain error of a fundamental nature affecting substantial rights, so that the same consequence would follow under the optional rules governing other defects first noticed on appeal.

Rule 52(b), F. R. Crim. P., is as follows:

"(b) **Plain Error.** Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court."

And Rule 40(1)(d)(2) of this Court provides that "the court, at its option, may notice a plain error not presented." A similar provision has been a part of this Court's Rules for over 90 years,⁸ and the Court has accordingly consistently held that it will notice fundamental errors even though not assigned or specified. See *Brotherhood of Carpenters v. United States*, 330 U.S. 395, 411-412, citing many cases; *Fisher v. United States*, 328 U.S. 463, 467-468.

The case of *Edward F. Zap*, decided some years back (No. 489, Oct. T. 1945), is instructive in this connection. Certiorari was granted, limited to search-and-seizure issues, 326 U.S. 802, following which, on the last day of the 1945 Term, the judgment of conviction was affirmed. *Zap v. United States*, 328 U.S. 624. A petition for rehearing filed on June 29, 1946, and a "Supplemental Petition for Rehearing," filed on July 5, were severally denied. 329 U.S. 824; J. Sup. Ct., Oct. T. 1946, p. 45 ("petitions").

Thereafter, following this Court's decision in *Ballard v. United States*, 329 U.S. 187, which ordered dis-

⁸ Rule 27(6), 306 U.S. at 708; Rule 27(4), 286 U.S. at 615 and 275 U.S. at 615; Rule 25(4), 266 U.S. at 672-673; Rule 21(4), App. 27 to 222 U.S., 210 U.S. at 488, and 108 U.S. at 573; Rule 21(8), 14 Wall. xii and 11 Wall. x (May 1, 1871).

missed an indictment against a mother and her son because of the systematic exclusion of women from the indicting grand jury, Zap filed a "Second Petition for Rehearing and for Recall of Mandate," relying on the *Ballard* decision. Despite articulated objection by the Acting Solicitor General, who had been called on for a response,⁴ this Court on his second—actually third—petition for rehearing, granted Zap the relief for which he had prayed, and directed dismissal of the indictment against him. 330 U.S. 800.⁵

⁴ See Memorandum for the United States, pp. 5, 12-13:

"This case differs from the *Ballard* case in that here a man alone was the defendant.

* * * * *

"On January 7, 1946, this Court in effect denied certiorari on the woman jury point when it limited the grant of certiorari to the question of the admissibility of the books and records. No request for an enlargement of the grant was made, either within 25 days of January 7, 1946, or before the argument of the case on February 4 and 5, 1946, or, indeed, at any time during the 1945 Term. This Court's limited grant did not preclude it from enlarging the grant and giving consideration to other questions presented by the record which it thought necessary or proper to decide. It would seem that under the circumstances of this case the woman jury point should be considered as having been finally disposed of on January 7, 1946, and that, in consequence, power to consider this point could not be revived by an application filed after the term."

⁵ The order read:

"*Per Curiam*: The motion for leave to file a second petition for rehearing and to recall the mandate is granted. The second petition for rehearing is granted and the judgment entered June 10, 1946, 328 U.S. 624, and order denying rehearing entered October 21, 1946, 329 U.S. 824, are vacated. The judgment of the Circuit Court of Appeals is reversed and the case is remanded to the District Court with directions to dismiss the indictment. *Ballard v. United States*, 329 U.S. 187. THE CHIEF JUSTICE and MR. JUSTICE JACKSON took no part in the consideration or decision of this application."

The present case is certainly not weaker substantively than that of *Zap*, for here there is very plainly present the identical deficiency that rendered invalid the indictment of *Russell et als*. Nor, we submit, is there any substantial procedural difference, inasmuch as when Zap petitioned for rehearing of the original order denying certiorari in his case (326 U.S. 777), he did not press the woman jury point that he had made below and in his original petition for certiorari (Pet. 20, Question 7). See his Petition for Rehearing, filed January 2, 1946, following order of December 11, 1945 (326 U.S. 692), a petition which was granted on January 7, 1946, when the Court granted certiorari on the books-and-records point (326 U.S. 802).

Thus Zap's conviction was ultimately reversed here on the strength of a supervening decision on an issue that he had all but formally abandoned in this Court.

Fourth. Whether the Court proceeds here under the mandatory terms of Criminal Rule 12(b)(2) or under the discretionary formulations of Criminal Rule 52(b) and of its own Rule 40(1)(d)(2) is perhaps less important than that it grant this petitioner the relief he now seeks. For, very plainly, it would be inconsistent with the even-handed administration of justice to send this petitioner to jail on the 14th of May after conviction on an indictment that was invalid in precisely the same respect as those on which *Russell* and five others went free on the 21st of May.

Accordingly, we urge that this petition for a rehearing should be granted, that the judgment heretofore entered in the above-entitled cause should be vacated, and that a judgment should now issue reversing the

judgment below on the authority of *Russell v. United States*, No. 8, decided May 21, 1962.

Respectfully submitted.

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CERTIFICATE OF COUNSEL

I certify that this petition is presented in good faith and not for delay.

FREDERICK BERNAYS WIENER

JUNE 1962.